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WORLD MARITIME UNIVERSITY
Malmö, Sweden

**PIRACY IN SOUTHEAST ASIA:
EXAMINING THE PRESENT AND REVISITING THE
PROBLEMS OF DEFINITION, PREVENTION,
RESPONSE AND PROSECUTION**

By

LEOPOLDO V. LAROYA
Philippines

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

In

MARITIME SAFETY AND ENVIRONMENTAL PROTECTION
(Nautical)

2000

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

LEOPOLDO V. LAROYA

18 August 2000

Supervised by:

Lt. Cdr. Maximo Q. Mejia, Jr., PCG
Lecturer, Maritime Administration, Safety and Environmental Protection
World Maritime University

Internal Assessor:

Dr. Proshanto K. Mukherjee, Ph.D.
Course Professor, Maritime Administration, Safety and Environmental
Protection
World Maritime University

External Assessor:

Capt. Jayant Abhyankar
Deputy Director, International Maritime Bureau
International Chamber of Commerce

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Particular heartfelt gratitude goes to:

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- The International Transport Workers Federation who, without their sponsorship, I would not have made it here at WMU.

To friends and classmates, to the MSEP staff, to the WMU staff, to the Filipino community in Sweden, and to those that I failed to mention, rest assured that your invaluable assistance has been greatly appreciated.

DEDICATION

To my wife Weng and my wonderful son Zach, who have remained brave and
supportive in spite of my seventeen months of absence,

to my brothers Joel and Nouis who have filled in the gap of my absence
by offering their assistance to my wife and kid
during those difficult and lonely moments,

and finally, to those who believed in my capabilities,
never faltering to be at my side and
offer their humble assistance,

the result of my hard work and sacrifice
is in all modesty, humbly dedicated.

ABSTRACT

Title of Dissertation: **Piracy in Southeast Asia: Examining the Present Situation and Revisiting the Problems of Definition, Prevention, Response and Prosecution**

Degree: **Master of Science in Maritime Safety and Environmental Protection (Nautical Stream)**

This dissertation is an analysis of piracy, focusing on the present situation of piracy, problems related to definition, prevention, response and prosecution. The objective of this dissertation is to present a backgrounder on piracy, both historical and present-day, and to analyze the problems associated with piracy being witnessed today.

Piracy has existed for many a century. It has evolved from different modes and concepts and was, in some point in time, a legal and authorized activity. It is through history that international law on piracy was based. Modern day piracy differs quite much from historical piracy. This is one of the reasons why the international law on piracy failed to be in line with what modern day piracy is all about.

Particular analysis is made on piracy in Southeast Asia where most piracy incidents occur today. Incidence and location of piracy attacks shall be analyzed, to determine its relevance to piracy in international law. The conceptual definition of piracy in international law as analyzed from piracy of today, has loopholes that need to be addressed. The loopholes will be carefully examined in this dissertation, providing the basis for recommending that piracy in international law should be re-defined so as to suit modern day piracy and to offer uniformity among all States.

The problem of piracy also involves an analysis and investigation of the different phases of a piracy act. The root cause of piracy shall be discussed, enabling to determine what can be done to stop piracy syndicates. There has been much publication offering recommendations to aid the ship crew in the event of piracy as well as aid the government in the actions to take against piracy. This dissertation examines some of those important recommendations as well as problems that hinders the enforcement of anti-piracy, problems related to jurisdiction, investigation and prosecution of pirates.

After analyzing all aspects of the problem related to modern day piracy, solutions and recommendations will be offered, foremost of which involves international, not just regional, cooperation in coming up with a uniformed guideline in the definition in international law, enforcement, jurisdiction, investigation and prosecution.

KEYWORDS:

Piracy	Pirate
Armed Robbery	Maritime Security
Maritime Safety	Terrorism
Hijacking	Seajacking

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LIST OF ABBREVIATIONS

APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BIMCO	The Baltic and International Maritime Council
DSC	Digital Selective Calling
EEZ	Exclusive Economic Zone
ICC	International Chamber of Commerce
ICS	International Chamber of Shipping
ILC	International Law Commission
IMB	International Maritime Bureau
IMO	International Maritime Organization
Inmarsat	International Mobile Satellite Organization
ITU	International Telecommunication Union
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MSC	Maritime Safety Committee
PCG	Philippine Coast Guard
PLF	Palestine Liberation Front
PLO	Palestine Liberation Organization
PRC	Piracy Reporting Center
SAR	Search and Rescue
SUA	Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea of 1982
UNHCR	United Nations High Commissioner for Refugees
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

“Piracy, one of the traditional scourges of the sea, seemed to have been eradicated a hundred years ago, but most of the other criminal activities that have appeared recently are new. They serve to make life even more difficult for the seafarers who have become accustomed to the normal perils of the sea but could now find themselves being threatened by criminals - and possibly being murdered.”

-IMO Background Paper on World Maritime Day 1999

In November 1999, World Maritime Day was celebrated with the theme “IMO and the New Millennium”. An IMO Resolution was adopted during the Assembly meeting which specifies the “Objectives of the Organization in the 2000s”. One of the main objectives of the IMO in the new millenium is “to promote the intensification by Governments and industry of efforts to prevent and suppress unlawful acts which threaten the security of ships, the safety of those onboard and the environment.” One such unlawful act that IMO considers as a significant issue is piracy. Indeed, piracy is now a major problem in many parts of the world.

In this century, Asia is considered the nucleus of maritime trade. Maritime trade from Europe and the Gulf pass through the Malacca Straits. Within Asia, the South China Sea has been the busiest body of water in terms of maritime traffic. So important that some countries that rely on maritime trade for their economy consider piracy as a threat to their national security. The growing threat and increasing incidence of piracy in the area has hindered smooth and effective maritime trade, despite the presence of international organization guidelines and regulations to

prevent and suppress piracy. For years, the International Maritime Organization has been coordinating the efforts to minimize, if not eradicate piracy, with the help of other concerned organizations such as the International Maritime Bureau and its Regional Piracy Center in Malaysia. But the efforts seemed inadequate, as statistics will show that there is an increasing incidence of piracy in the area.

There are so many issues that come to mind in discussing piracy, foremost are the following:

- Efforts in eradicating piracy may not be sufficient.
- There must be something wrong with the policies and guidelines in place.
- Shipping companies, more precisely, the seafarers may or may not know what to do in the event of piracy aboardship.
- International law seems vague on the issue of piracy vis-à-vis armed robbery aboard ships. Does that distinction really help in the prevention of piracy or should we treat both cases as a clear act of piracy regardless of definition?
- When pirates are apprehended, the international community does not have the same perception and harmonized procedures in handling piracy prosecution cases.

The above issues raised are but some of the problems related to piracy that this author aims to examine and answer. This dissertation hopes to explain and offer solutions on issues that has hampered the fight against piracy by providing a clear picture of the piracy situation, particularly in Southeast Asia and by providing a critical analysis of problem areas in piracy.

It is believed that the issue to tackle the issue on piracy is indeed timely and important because piracy is at the forefront of IMO's top priorities. The Philippines has not tackled piracy with the same fervor as other maritime nations. It is hoped that through this dissertation, international organizations as well as governments concerned with piracy would change its doctrine in favor of putting piracy as a top

priority in international and national policy to protect maritime interest and instituting the necessary changes that this dissertation intends to recommend.

This dissertation will cover the historical background of piracy as it relates to modern day piracy. In the analysis of the problem, aspects of definition of piracy in international law will be analyzed to consider its relevance to today's piracy problem. Relevant codifications on piracy will be mentioned in order to make this dissertation a one-stop reference guide to all relevant international regulations and resolutions on piracy.

Piracy in Southeast Asia will be analyzed. The reason for the limitation of the analysis of piracy incidents to one specific region is because the great majority of piracy incidents occur in Southeast Asia and that maritime traffic in the region has remained the nucleus of maritime trade.

Problems on piracy shall be discussed, with emphasis on definition in international law, root cause of piracy, preventive measures and countermeasures for ships, enforcement measures for government agencies and problems related to investigation, prosecution and punishment.

Chapter 2 will provide a historical background of piracy including terminologies used as well as methods of piracy existing at different periods in time. This chapter will also provide the current piracy situation in the world and explain how incidences of piracy today are collated. Chapter 3 will discuss piracy incidents in Southeast Asia, focusing on piracy hotspots such as the Malacca Straits, Hong Kong-Luzon-Hainan Triangle, China/Hong Kong/Macao Area, Indonesian waters, Malaysian waters, Gulf of Thailand and waters in Southern Philippines. Chapter 4 discusses the international law on piracy, its background and its conceptualization as well as relevant codifications on piracy from the International Maritime Organization. Chapter 5 is the main chapter and examines the problems related to piracy with emphasis on definition, root cause, preventive measures and countermeasures for ships, enforcement issues, and problems related to legislation,

investigation, prosecution and punishment. This chapter also provides and offers solutions in overcoming the problems mentioned. Finally, Chapter 6 provides the summary and conclusion as well as recommendations to attain the objectives of this dissertation.

CHAPTER 2

PIRACY THROUGHOUT THE CENTURIES

“His name originally, it seems was Edward Drummond, and he began his career as an honest seaman, sailing out of his home port of Bristol, England. He is seldom known by that name, for after he became a pirate he began calling himself Edward Teach, sometimes spelled in the records as Thatch, Tache, or even Tatch. Yet it was as Blackbeard that he was, and still is, known, and it was under this name that the people of his generation knew him, 'a swaggering, merciless brute.'”

-- Hugh F. Rankin

Historical piracy dates back to time immemorial. During those times, piracy was synonymous to different terms used, depending on the location and activity of the pirates. While pirates have been synonymous to outlawed plunderers for whom violence is a necessary and inhumane action, there was a time in history when piracy was in fact a legitimate activity sponsored by States in times of war.

2.1 Historical Background and Terminologies Used

Piracy comes from the Greek word “peiran” which means attack (Henriksson, 1996). It is an age-old practice which dates back as early as 1200 BC during the time of the Phoenicians. In 1100 BC, Chinese and Japanese pirates operated in the South China Sea and along the coastline from Korea to the Strait of Malacca (Asiaweek, 1992). In 700 BC, the coastline from Oman to Qatar in the Persian Gulf was known as the Pirate Coast where Assyrian merchant vessels were attacked by Arabian and African pirates.

The Mediterranean was also a haven for pirates. The Athenians had to defend the Greek archipelago from pirates. The Romans were also attacked by pirates from

Turkey. In 78 BC, Julius Caesar was captured by pirates and held for more than six weeks until his family purchased his liberty. The Romans according to the words of Cicero called these pirates “hostes humani generis” which means “enemies of the human race.” After the fall of Rome in 5 AD, Turkish power became predominant in the East and pirates coming from the Barbary States of North Africa (Morocco, Algeria, Tunisia and Libya) replaced the Turkish pirates. From the fifteenth century and during the start of the Holy War, pirates were employed by rulers of both sides of the Christian-Moslem conflict. Moslem pirates and privateers operated mainly out of the Barbary States while their Christian counterparts had their headquarters on Rhodes and Malta (Peterson, 1989).

Pirates were also predominant along the European Atlantic Coast and the North Sea during the medieval era. In 700 AD, Scandinavian Vikings plundered from both land and sea from the Baltic Sea to the Strait of Gibraltar. The word “Viking” meant sea rover or pirate in Old Norse (Peterson, 1989). After the Viking Age, pirates of French, Scot, English, Welsh and Irish origin operated in British waters, albeit sporadic ally, because of the firm naval policies of Henrik III, Edward I and Edward II (Sherry, 1986).

By early sixteenth century, piracy once again became a widespread practice in Europe. Scilly Isles and Cinque Ports in England’s southeast coast became a well-known lair of pirate syndicates who operated in the English Channel and the Thames. Although piracy at that time was already considered a grave offence punishable by death, the British monarchy tolerated them since they constituted a good protection against their enemies. However, by 1690, piracy in European waters became less, becoming more common instead in the Americas where pirates were known as privateers, buccaneers and corsairs.

2.1.1 Privateering

During the time when Spain, England and France were competing for domination over the New World, privateering was used as a means of warfare.

While piracy per se was considered an illegal activity, privateering was considered a legal act sanctioned by states during wartime. Privateering became rampant in the sixteenth century up to the late eighteenth century, used by states in Europe as well as those in the eastern Indian coast, Arabian Peninsula and Southeast Asia. In order to support the war when government finances were insufficient and the navy was small, governments recruited privately owned vessels to capture and plunder the enemy's merchant vessels to disrupt trade and finances of the nation with whom they were at war (Peterson M.J., 1989). The English government resorted to privateering and sometimes financially supported pirates (buccaneers) and privateers to attack Spanish and French ships, especially in the Caribbean where Spanish galleons loaded with gold, silver, cacao and rum, were on their way from Spanish colonies in America to Europe. This period in history was referred to as "the golden age of piracy."

As opposed to piracy, privateering was a legal activity because the captain of a privateer ship held a license called "letter of marque and reprisal" which gave him the authority to attack enemy ships. Because they were legal, privateers were not liable to punishment and were able to sell their loot openly and legally. Lack of supervision and control, however, led to privateers succumbing to greed and starting to attack vessels of friendly or neutral countries.

In 1689, privateering in the Caribbean came to an abrupt end when England made peace with Spain and went into the League of Augsburg against France (Henriksson, 1996). Thus, privateers lost their "legal" authority and became just plain pirates (buccaneers and corsairs), widening their area of operation to the North American colonies along the Atlantic coast. Cities like New York, Charleston and Boston became popular markets for pirate loots.

The ex-privateers extended their activities at the end of the seventeenth century when trade between Europe, America and the Far East increased, especially when big merchant fleets such as the East India Companies were enjoying good trade. These ex-privateers set sail for the Indian Ocean to continue their illegal activities against European and Arabian merchant ships.

The rampant activities of the now defunct privateers who are now just common pirates resulted in the increase in piracy incidence, which led to the changing attitude of governments in the 1800s calling for the abolition of privateering. Also, navies grew larger, sufficient to counter enemies during wartime. In 1856, the Declaration of Paris formally abolished the practice of privateering. This was again reiterated in the Second Hague Conference of 1907.

2.1.2 Buccaneers

In the sixteenth and seventeenth century, as opposed to the legal activity of privateering, pirates other than privateers were called “buccaneers” which was a label given to English pirates. Buccaneers means “smokers of meat” because aside from raiding Spanish vessels, they also slaughtered cattles and smoked them on wooden frames called “boucan” to sell to passing ships. The buccaneers were employed by the English and French empires to deter against Spain’s quest for domination over the New World. Primarily, the buccaneers raided Spanish galleons in the vicinity of the Caribbean islands with the blessings and encouragement of Queen Elizabeth I (Spence, 1995). This does not mean, however, that the activities of the buccaneers were considered legal. In fact, their plunderous activity was still illegal but motivated discreetly by the English monarchy.

2.1.3 Corsairs

While the English termed them as “buccaneers,” the French called them “corsairs” which was the name given to French pirates who raided not only Spanish ships but Spanish settlements as well in South American and the Caribbean islands. Corsair comes from the Latin word “cursus” which means “race,” a term referred to small boats that carried French pirates (Henriksson, 1996).

2.1.4 Piracy in the Eighteenth and Nineteenth Centuries

With the increase in international trade, governments started to regard piracy as a threat to maritime commerce and tried to solve the problem of piracy. The British government conducted an extensive anti-piracy campaign in the Caribbean and western Atlantic where they replaced corrupt colonial officials and adopted stricter measures in ports. The British Royal Navy chased pirates along the West African Coast and in the Red Sea as well. The elimination of piracy by the British Royal Navy in Southeast Asia proved difficult because of local wars and European diplomatic rivalries in the area concerned (Peterson, 1989).

In 1822, the United States, Spain and England carried out a similar anti-piracy campaign in the Caribbean. The American Congress voted for the establishment of an anti-piracy force which would clear out the Caribbean and other surrounding waters of pirates. This proved successful, resulting in the capture and sentencing of pirates to death or imprisonment by English, Spanish and American courts. By 1830s, organized piracy disappeared in the Caribbean.

The latter half of the nineteenth century saw the decline of piracy in major sea areas. This can be attributed to the abolition of privateering as agreed by signatory countries in the Declaration of Paris and the Second Hague Convention. Efforts to abolish the slave trade between Africa and the Americans also contributed to the suppression of piracy through the establishment of regular naval patrols in the southern Atlantic, the Indian Ocean and the Caribbean (Henrikson 1996). Another factor contributing to the decline of piracy in the nineteenth century was the emergence of evangelical revivalist movements which influenced the world society and made it less tolerant towards pirates and their violent and extravagant way of living (Peterson 1989).

2.2 Piracy in the 20th Century

From historical piracy to modern day piracy, incidents of piracy have continued to rise to alarming levels. While there was a declining trend in historical piracy as a result of actions taken to outlaw privateering as discussed in the latter section, piracy in the 20th century has steadily increased. This section will discuss the incidents of modern day piracy and its relation to present day international law on piracy.

2.2.1 Data Collection on Piracy Incidents

Established in 1981, the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC) is perhaps the only organization that collates a comprehensive set of data on piracy incidents. ICC-IMB is a non-governmental non-profit-making organization that is charged with the investigation and prevention of maritime fraud and piracy. It functions as a focal point for information concerning maritime fraud and piracy for maritime companies and governments involved in international maritime trade. It is for this reason that this author has based his analysis of piracy incidents from the data collated by IMB through its Piracy Reporting Center (PRC) in Kuala Lumpur, Malaysia which was established in 1993. The PRC is a twenty-four hour information center whose function is to receive reports of piracy incidents, alert ships and government agencies, issue regular status reports, collate/analyze all information received and issue consolidated reports to interested bodies/organizations.

IMB, however, defines piracy differently than the codified definition of piracy, i.e. Geneva Convention and UNCLOS 1982 definition, which is based on international law. The reason and analysis of conflicting definitions on piracy shall be discussed later in the succeeding chapters. For now, the IMB data will be considered in the analysis of incidents of piracy worldwide, with emphasis on Southeast Asia where the majority of piracy incidents occur.

It should be pointed out that according to numerous scholars, the existing statistical data on piracy is by no means a true indicator of the actual number of incidents that takes place. Some say that piracy incidents reported represent only one half of the actual incidents. Others even believe that the actual number of incidents might even be ten times more than what is reported. There are a number of reasons for failure to report an actual piracy attack or an attempted attack. For one, shipowners fear that their vessel will be delayed in port pending an investigation that will disrupt the vessel's schedule. It costs around \$25,000 a day to keep a vessel in port. Add to that, the delay in the delivery of goods and services to the intended owner of the cargo. Another reason is that a successful piracy attack would mean that the vessel lacks or failed to institute security measures to deter a piracy attack and would reflect on the master's competence. The ensuing unfavorable media coverage of a shipowner's vessel might discourage future cargo owners from using the same vessel or vessels of the shipowner. Further, insurance premiums might increase and seamen's unions might demand for high risk payments. States might downplay piracy reporting for fear of being branded as apathetic to the piracy problem, loss of tourism, as well as commercial and national security reasons.

It is for these reasons that statistical data on piracy, while providing a good scenario on piracy worldwide, does not render the clear and accurate picture of the actual piracy situation. Under-reporting also hampers the repression of piracy because government agencies cannot react when an incident is not reported and shipowners might be misled into thinking that a particular area is free of pirates because the data presented does not show any incident in that area.

2.2.2 World Situation

There is reason to be alarmed with the increasing incidence of piracy worldwide. According to IMB, the number of reported piracy incidents for the year 1999 increased 40% compared to the 1998 figures. More staggering is that the number of piracy incidents in 1999 increased by 166%, almost triple than the number

of incidents in 1991. Appendix A provides the IMB data and tables used on both actual and attempted attacks from 1991 to 1999 as well as other tables in providing an analysis of piracy incidents. The graph below gives a graphical representation of the number of piracy incidents from 1991 to 1999 for better appreciation.

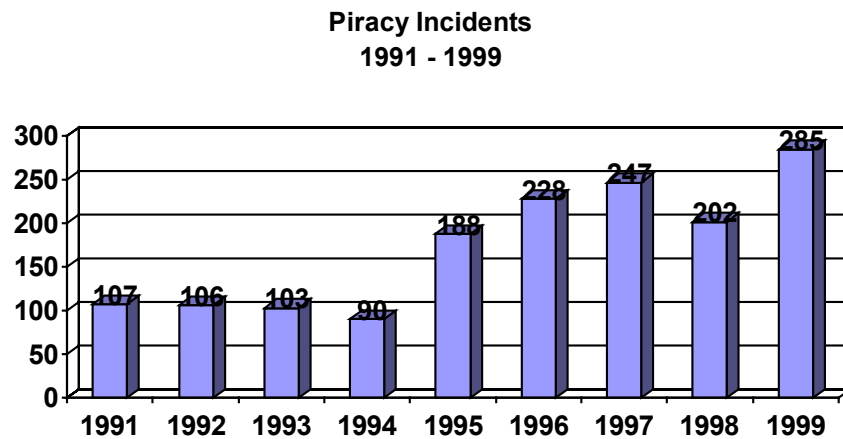


Figure 2.1

Source: Data taken from ICC-IMB Annual Report on Piracy, 2000

IMB also attempts to distinguish between actual and attempted piracy attacks as well as the status of the vessel during the time of the incident, i.e. berthed, anchored or steaming (Appendix A).

As mentioned earlier, the IMB definition of piracy differs from the codified definition of piracy in that IMB defines piracy as:

“An act of boarding any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.”

A more detailed discussion on issues related to the different definitions of piracy is reserved for a later chapter. For purposes of this section, however, it should suffice to point out that the IMB definition includes incidents occurring while anchored or berthed. From the codified definition of piracy (international law), piracy can only be committed on the high seas. For the purpose of this dissertation since no data is available on piracy incidents occurring in the high seas, the table below provides an analysis of the IMB data (Appendix A), with the assumption that

the IMB data on “steaming” will be presumed as incidents occurring in the high seas. With such assumption, it can be surmised that out of a total of 229 actual attacks in 1999, 61 or 27% of the incidents happened while the vessel was steaming and presumed by this author to be in the high seas while 138 or 60% of the actual attacks happened while the ship was anchored. As for 56 recorded incidents of attempted attacks, 41 or 73% occurred while the vessel was steaming (and presumed on the high seas) while only 15 or 27% occurred while the vessel was anchored. This analysis is just to provide for a realistic number of piracy incidents occurring in the high seas. While this author came up with the presumption that 27% of incidents occur in the high seas because they were recorded by IMB as ships attacked while steaming, it is widely accepted that this presumption is too high because most ships attacked en route are within territorial waters of a State. Some authors claim that there is as little as 20% of ships attacked in the high seas, while 80% of the attacks occur in waters other than the high seas (Wood, 2000).

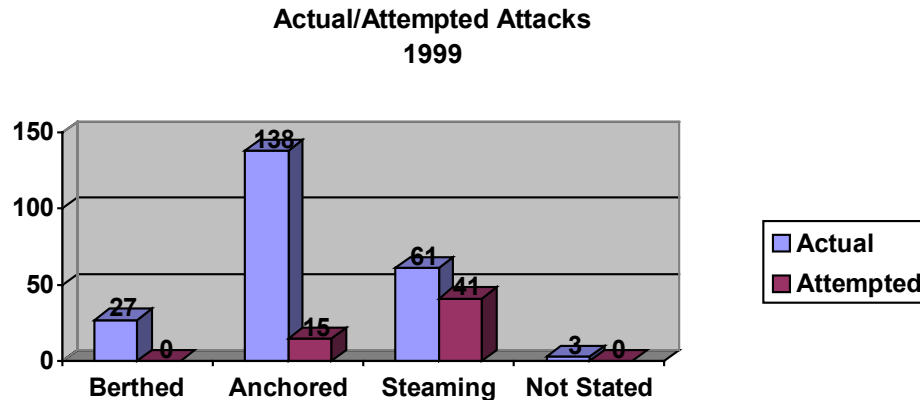


Figure 2.2
Source: Data taken from ICC-IMB Annual Report on Piracy, 2000

The IMB data reveals that for actual attacks, only 27% (61 incidents) happened while the vessel was steaming and thus can be presumed as happening on the high seas. This means that a good majority (63%) of actual attacks, based on this authors presumption, while other authors claim 80% of actual attacks, cannot be considered as piracy according to the Geneva Convention and UNCLOS definition of piracy.

It can be surmised as well that while most of the actual attacks happen when the ship is anchored, it is the other way around for attempted attacks where 73% of attempted attacks happened while the ship was steaming.

In totality, counting both actual and attempted attacks, only 102 incidents or 35% out of a total number of 285 incidents in 1999 can be presumed as occurring in the high seas. As mentioned earlier, this is just for presumption purposes since no available data shows if the 102 incidents mentioned did indeed occur in the high seas. There is a great possibility that these 102 steaming incidents might have occurred in territorial waters or in the EEZ which excludes them as piracy incidents according to the codified definition of piracy. Once again, some authors claim that 80% of the attacks occur in waters other than the high seas. What can be surely deduced is that more incidents of attacks happen in areas not included in the codified definition of piracy and therefore becomes less significant in the eyes of the international community for reasons that such incidents are under the jurisdiction of national laws. A master of a vessel, however, does not care much about definition and legal interpretation, on whether the attack on his vessel happened in the high seas or in territorial waters. What he cares about is the safety of his ship. It is therefore apparent that there is a problem on the definition of piracy and how it affects actions to be taken by governments, whether governments treat incidents that happened in territorial waters and in the high seas with equality. This problem will be further discussed in the succeeding chapters.

The IMB report also reveals that besides the increasing number of piracy incidents, there is an indication that the level of violence has as well increased substantially. In 1999, the number of incidents where pirates boarded with guns increased as compared to 1998. Incidents where pirates were armed with knives doubled as compared to 1998. Extreme violence, i.e., death, however, declined (Appendix A).

Historical piracy, from the time it was known as privateering, buccaneers and corsairs until the 18th and 19th centuries, was at a decline because of actions taken by

states to outlaw such criminal activity. However, piracy in the 20th century, known as modern day piracy, showed an increasing trend because of the change in purpose of the illegal activity as compared to historical piracy, and the level of violence cannot be discounted. The next chapter will examine piracy by analyzing incidents occurring in Southeast Asia where the majority of piracy attacks take place.

CHAPTER 3

PIRACY IN SOUTHEAST ASIA

3.1 Background

The emphasis of this dissertation on Southeast Asia is due to the fact that a great number of piracy incidents and/or armed robbery incidents occur in this area and the entire region has always been considered a piracy danger zone. Southeast Asia includes the Strait of Malacca, South and East China Sea including waters surrounding countries in Southeast Asia. Based on the IMB report (Appendix A), 165 or 60% of the 285 incidents in 1999 occurred in Southeast Asia. Indonesia ranked first with the highest number of incidents (113), twice more than the 1998 recorded incidents. Malaysia ranked third with 18 incidents while Singapore Straits ranked fifth with 13 incidents. Based on the IMB report, piracy attacks in Southeast Asia varied in the number of occurrences. What is evident from the following graph is that the year 1999 has so far the largest number of piracy attacks recorded in a nine-year period.

Piracy Attacks in Southeast Asia

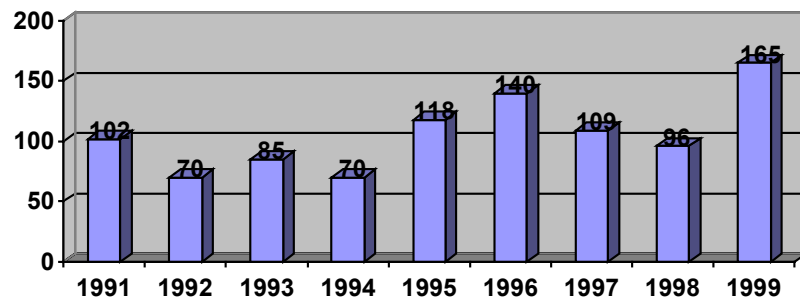


Figure 3.1

Source: Data taken from ICC-IMB Annual Report on Piracy, 2000

Piracy Hotspots in Southeast Asia



Figure 3.2

Source: Southeast Asia Map, CIA Website

3.2 Malacca Straits

Malacca Strait is the longest strait in the world and is the main seaway connecting the Indian Ocean and the China Sea. It is under the jurisdiction of three coastal states, namely Malaysia, Indonesia and Singapore. Thus, incidents in the area do not constitute as piracy under international law but rather as piracy per se, depending on national laws if the countries concerned indicate that such attacks within their territorial waters can be considered as piracy. Because of the increasing maritime traffic in the Malacca Strait, over 600 vessels transit the strait on a given day, the area concerned is considered notorious for piracy attacks, particularly in the Phillip Channel close to Singapore. What makes the Malacca Strait even more important is the fact that all tankers destined for Asia from the Persian Gulf pass through the Strait of Malacca, oil being a major commodity imported by countries such as Japan. States who rely on oil imports have perceived that a significant threat to the carriage of this product could be interpreted as a direct threat to a State's national security.

According to Sharon (1989), 34 attacks were reported in 1995. In the IMB report, however, there were only four reported incidents in both Malacca and Singapore Straits. The variance in data is immaterial, however, because the IMB report shows that indeed, the Malacca Strait is a piracy prone area since the Indonesia side of Malacca Strait also had numerous incidents of piracy. Navigating through the narrow Phillip Channel means that vessels will have to slow down to 10 knots. When confined to a narrow and restrictive channel, and navigating at night, a vessel is extremely susceptible to piracy attacks. Vessels are attacked usually at night in the cover of darkness. Pirates use small fast boats with outboard motors, usually with sophisticated radio and radar equipment to monitor traffic and police activity. The pirate boats approach the vessel from the stern and use grappling hooks and ropes to climb aboard. The number of pirates might range from two to as much as ten men armed with automatic weapons, knives and pistols which can quickly overcome not an outnumbered crew but a defenseless crew. They usually go to the

captain's cabin and ransack the ship's safe. When time permits, they also ransack crew's cabins for cash and personal belongings. Pirates will try to avoid confrontation but in some reports, crewmembers who offer resistance are tied up.

Frequent cases of piracy in this area are perpetrated by amateur pirates, i.e. fishermen, who are driven by poverty (Asiaweek, 1992). More alarming are sporadic incidents perpetrated by criminal syndicates who are professional pirates acting with precision and using sophisticated equipment and automatic weapons. Their motives include selling the cargo, and the vessel. The vessel is usually re-flagged and sold. One recent example is the piracy attack and hijacking of *MV Alondra Rainbow* on October 22, 1999. The vessel was loaded with 7,000 metric tonnes of aluminum ingots and sailed from Kuala Tanjung, Indonesia to Miike, Japan. Shortly after departure, the vessel was attacked and hijacked by pirates armed with guns and swords. The crew were transferred to an old ship and set adrift off the west coast of Thailand. Ten days after, they were rescued by a Thai fishing boat. The IMB Piracy Reporting Center in Malaysia alerted all vessels and government agencies in the region.

On November 14, a master of a ship reported sighting a ship with the same description as *Alondra Rainbow* in the Arabian Sea. The Indian Coast Guard dispatched a patrol aircraft to search the area. Upon sighting, the Indian Coast Guard reported that the suspect ship bore the name *Mega Rama* and flew the Belize flag. A quick check by the IMB revealed that no such ship was registered with Belize. The Indian Coast Guard sent a patrol craft to intercept the vessel 70 miles west of Ponnani. Despite warning shots, the vessel continued to disregard the coast guard. An Indian navy corvette (*INS Prahar*) was sent to pursue the suspect vessel and on November 16, 1999, the vessel was apprehended 170 miles west of Goa. The fifteen pirates attempted to destroy evidence by setting the ship on fire and scuttling the ship. The timely response of the Indian coast guard prevented and gained control of the vessel which was towed to Mumbai. Discovery of documents revealed that 3,000 tonnes of aluminum ingots worth US\$4.5M were discharged at an unknown destination, undoubtedly sold in connivance of a buyer who knew that such shipment

is stolen cargo. Discovery of credit cards, thousands of dollars in various currencies and the fact that two of the pirates had featured in earlier cases of hijackings suggest that the pirates are part of a larger syndicate.

It is said that professional pirates such as the example above are members of criminal syndicates. Some say that such syndicates are operating out of Singapore but the international shipping community suspects that the Indonesian navy, marine police or customs agents are involved in this unlawful business. This is somewhat plausible since the skill and discipline of the pirates indicate that they are well trained in combat. According to a senior Singapore shipping company official, Indonesian customs vessels were until 1985 extracting bribes from every ship plying between Singapore and Indonesia. Otherwise, it was alleged, the ships had to stay for two or three days while customs were checking their entry permit. However, the permits were abolished in late 1985, and after that pirate attacks in Indonesian waters increased dramatically. This has given rise to the suspicion that the piracy has replaced the bribes as the customs officers' source of extra income (Asiaweek, 1988). This assumption, however, cannot be supported by evidence and the Indonesian government denied such accusations (Asiaweek, 1992).

While Indonesia and Malaysia deny the existence of widespread piracy in the Malacca Strait and claim that the situation is highly exaggerated, Singapore has taken measures against piracy within its territorial waters. The Singaporean authorities, for example, have a special VHF radio frequency for reporting incidents. They also advise ships on measures to be taken to prevent boarding and recommend that transit within the Strait be done at night.

Recent news items indicate that Indonesia and Malaysia are now taking steps to contribute in the region's anti-piracy campaign. The Indonesian Director General of Sea Transport admitted that foreign ships using the Straits are wary of the increasing number of piracy attacks and many of these attacks were reported to be carried out by Indonesian pirates who are part of a syndicate. These syndicates are usually headed by foreigners. The Indonesian Government had asked the Indonesian Navy to help curb the piracy attacks. On August 1999, an Indonesian court jailed Mr.

Chew Chang Kiat alias Mr. Wong for six years for masterminding a series of piratical attacks. Mr. Chew is a Singaporean national. He was said to be responsible for the hijacking of tankers in the Malacca and Singapore straits. Apparently, the head of Mr. Wong's syndicate is stationed in China. The hijacked tankers converted to phantom ships, and their cargoes are sold in China. According to IMB, Mr. Wong's international network operated from China, Hong Kong, Philippines and Malaysia (IMB, 2000).

Malaysia has also started to contribute in the anti-piracy campaign. It was reported that police authorities in Malaysia will conduct air patrols to protect local fishermen who are frequent targets of pirates (IMB, 2000).

There have been attempts to solve the piracy problem in the Malacca Strait through regional cooperation. In 1992, Indonesia made agreements with Singapore and Malaysia on coordinated sea patrols, a common radio frequency, exchange of information and mutual assistance in hot pursuit of pirates. Indonesia also created a special anti-piracy team called "Sampata" (Time, 1992).

The main problem with regards to piracy in the Malacca Strait is that the attacks take place in territorial waters which renders the international law of piracy and the universal jurisdiction inapplicable. This shall be explained in succeeding chapters.

3.3 South China Sea and the Rest of Southeast Asia

3.3.1 Hong Kong-Luzon-Hainan Triangle and China/Hong Kong/Macao Area

The South China Sea particularly in the Hong Kong - Luzon (Philippines) – Hainan (China) Triangle as well as the China/Hong Kong/Macao area, the Sulu Sea bordering the Southern Philippines with Indonesia and Malaysia, and the Gulf of Thailand are considered piracy prone waters where a significant number of piracy attacks have taken place over the years. Victims of piracy attacks are diverse

compared to piracy incident in the Malacca Straits. These include cargo ships, tankers, fishing vessels, small ferries and Vietnamese boat refugees.

In the Hong Kong – Luzon – Hainan Triangle, the peak of piracy incidents occurred in 1993 where 27 incidents were reported. From the IMB report, the number of piracy incidents in the area seems to be declining over the years with zero reported incidents in 1998 and 1999. Incidents of piracy in the Triangle are comparable to incidents of piracy in the China/Hong Kong/Macao area which had, according to the IMB report, 31 incidents of piracy in 1995.

Some incidents of piracy in both areas were reported to have been perpetrated by groups of fifteen to twenty pirates in Chinese military uniforms using 20-meter speedboats which resemble a Chinese navy or police vessel and armed with heavier weapons. The Chinese government has been accused of being behind some of these piracy acts. It seems that Chinese anti-smuggling units established in 1992 were conducting patrols not only in Chinese territorial waters but also in international waters where China has said time and again that the South China Sea forms part of China's territorial claim and jurisdiction. These Chinese anti-smuggling units were said to have exceeded their powers and seized ships indiscriminately, motivated by their right to a share of the supposed "smuggled" cargo carried by ships. For instance, on January 6, 1993, the Danish freighter *MV Arktis Star* was attacked by six men in Chinese military uniforms who approached the vessel in a speedboat and fired at her with rocket-propelled grenades (Telegraph Magazine, 1993). On March 20, 1994, the Honduran cargo ship *MV Tequila* was hijacked while lying at anchor in Hong Kong waters. The Hong Kong marine police observed the attacking ship disappear off the radar screen among a group of islands controlled by the Chinese navy (The Economist, 1994). The Chinese government denied all allegations. Recently, however, the Chinese authorities had declared their cooperation in the anti-piracy campaign. China has recently sentenced to death and later executed in December 1999, 13 pirates in connection with the murder of 23 Chinese seamen onboard *MV Cheung son* which was hijacked on November 16, 1998. The 13 death convicts were among the 38 pirates accused of sea robbery, murder, drug trafficking

and illegal possession of guns and ammunition. Nineteen pirates were given prison sentences and fines. One of those sentenced to death was Huang Daming whose ship was used as the mother ship from where the pirates were able to launch its pirate attacks. It is interesting to note that the same ship owned by Huang Daming was previously used for customs border patrols.

China's Ministry of Public Security, in response to official acknowledgements of the piracy problem, had decreed the creation of specialized marine departments to handle piracy. The Chinese government, during the 71st Session of the Maritime Safety Committee of the International Maritime Organization (IMO) held in May 1999, affirmed their stance to suppress piracy and armed robbery against ships and appealed for international cooperation in combating transnational piracy (IMB, 2000).

3.3.2 Gulf of Thailand

Although piracy in the Gulf of Thailand where the victims are Vietnamese boat refugees has been in the decline because of the improving political situation in Vietnam, it is worth examining how international efforts have contributed to its decline. The Gulf of Thailand was before considered as a piracy prone area, particularly during the time of the exodus of Vietnamese boat refugees in the early to late 1980s. Vietnamese boat refugees who travel to Thailand and Malaysia are robbed of their life savings and often murdered, raped, mutilated and finally thrown into the sea in the course of a piracy attack (Henriksson, 1996). Sometimes, girls and women are abducted and brought to the prostitution networks in Bangkok and the Island of Koh Kra, where they are sold to brothels (Kasemsri, 1989).

The pirates operate in the shadow of a large fishing fleet and are allegedly Thai fishermen who by these unlawful means try to extend their financial income (Boulanger, 1989). In 1980, the United Nations High Commissioner for Refugees (UNHCR) provided the Thai government with a non-armed surveillance vessel to patrol the waters and the first Anti-Piracy Programme commenced, financed

bilaterally by a donation of \$2 million to Thailand from the United States. The program continued until 1981 when it ceased because the US and Thailand could not agree on how the programme should be financed. The UNHCR referred the situation to the Secretary General of the United Nations and to the International Maritime Organization resulting in the introduction of the second Anti-Piracy Programme which started on July 1982. This program was supported by UNHCR and funded by twelve donor countries, namely, Australia, Canada, Denmark, France, Federal Republic of Germany, Italy, Japan, Netherlands, Norway, Switzerland, United Kingdom and the United States. It involved the Royal Thai Navy, the marine police, the land police and the Harbour Department. The UNHCR functioned as the coordinator and the point of review and consultation between the donor countries and the Thai government.

The programme started with increase of sea patrols but the efforts were unrealistic considering that there are 33,000 square kilometers of Thai waters to cover. The programme shifted to on-shore investigation of attacks, based on descriptions of boats and pirates provided by surviving refugees, intelligence operations, training of personnel and law enforcement activities. After the introduction of the Anti-Piracy Programme, the number of attacks against boat refugees in the Gulf of Thailand have clearly reduced but some problems made effective suppression difficult. As mentioned, the area where the attacks occur is too large to be covered by a few patrol boats and aircrafts. To exacerbate the situation further, there are around 27,000 fishing boats registered to fish in the area, plus several thousands more that have false or no registration at all which makes the tracking of suspected pirates difficult. As a solution, the Thai Harbour Department started to use a new system of registration monitored by computers donated by the Norwegian government which facilitates the identification of boats suspected of being involved in piracy (Henriksson, 1996). Few prosecutions have so far been undertaken for piracy committed against the boat refugees because of the difficulty of identifying the offenders and the fear of the victims to testify against them.

3.3.3 Southern Philippines

The Philippine Archipelago consists of some 7,100 islands. The primary mode of transportation relies on inter-island sea travel using ferries and small cargo vessels. Further, the barter trade between the Philippines and its two neighbors, Indonesia and Malaysia, has increased merchant trade activity in the Southern Philippines, particularly in the Sulu Sea and Celebes Sea. The biggest factor affecting piracy in the southern part of the country, however, is the insurgency problem that has been going on for the past three decades. In the late 1980s, piratical acts in the area were allegedly committed by members of the separatist Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF) who are said to loot fishing vessels, small ferry vessels and cargo vessels in order to finance the separatist movement. This is supported by the fact that MNLF rebels in land resort to coercion and asking for large sums of money from landowners in exchange for so-called protection, in essence, meant “you give me money and I will not bother you.” The MNLF rebels cum pirates were known as “ambak pare” which means “jump, buddy”, an order given to victims forced at gunpoint to jump into the sea. The attacks often involve torture and acts of mutilation, for instance ears sliced off or knees smashed by bullets to make swimming impossible (Asiaweek, 1988). In the 1990s, the Philippine government brokered a peace accord with the MNLF but failed to do the same with the Moro Islamic Liberation Front (MILF) which is still fighting for an independent Islamic state in the Southern Philippines. Further, the Abu Sayyaf, a Muslim extremist group has been blamed for local terrorist acts including piratical acts, kidnapping for ransom and bombings. The Abu Sayyaf group has been accused of carrying out abductions in 1998. The victims in those cases were released unharmed after large ransoms were paid. On June 14, 1999, two Belgian nationals were kidnapped from their yacht while enroute from Zamboanga to Santa Cruz island. Their vessel was intercepted by another vessel carrying heavily armed men. Seven other passengers aboard the victim’s vessel were left aboard unharmed. Unlike in the Malacca Strait where regional cooperation on piracy is

evident, the Philippines has no agreement with Malaysia and Indonesia concerning the suppression of piracy in the area concerned.

The Philippine Sea as well as other inland waters in the Philippines are also frequented by criminal gangs including fishermen motivated by poverty and unemployment. Other areas prone to piracy include Tawi-Tawi, Jolo, Zamboanga, Basilan, along the Mindanao coast, in Manila Bay and other parts of the coast between Santa Cruz and Batangas in the Philippines. Disguised as fishermen or passengers, they attack fishing vessels, commuter ferries, cargo boats and boat refugees in order to get money or valuable personal items and the incidents often involve acts of violence. Some incidents, however, are perpetrated by well organized syndicates who forge registration papers and established connections to sell pirated ships and their cargo. An example is the hijacking in 1991 of *MT Tabangao*, an oil tanker servicing the domestic trade. She was renamed three times and was trading in Singapore before Indonesian Customs police apprehended the vessel. Philippine authorities apprehended five suspects including a Singaporean national. Those apprehended were apparently involved in at least four other hijacking incidents. The *MT Tabangao* incident is an example of what problems a government encounters, especially on problems of jurisdiction because it involves other countries (in this example, Singapore and Indonesia). The *MT Tabangao* incident is also an example of a piracy incident not included in the definition of piracy in international law (Geneva Convention and 1982 UNCLOS) but treated as piracy in Philippine laws. The problem is exacerbated when such treatment of incident in Philippine laws differs from how Singapore and Indonesia should treat such incident. This shall be explained in detail in the succeeding chapters.

According to the IMB report, the Philippines experienced the highest piracy attacks in 1996 with 39 reported incidents compared to 24 reported incidents in 1995. The Philippine authorities, however, recorded far greater number of piracy and armed robbery incidents because it defines piracy differently than the codified definition of piracy in international law. For instance, the Philippine government recorded 132 incidents of piracy in 1998 compared to only 15 reported by IMB. In

1999, the Philippine government reported 72 incidents compared to 6 incidents reported by IMB. Below is a table comparing the number of piracy incidents recorded by IMB as compared to incidents recorded by the Philippine Coast Guard (PCG). Appendix B provides the Philippine Coast Guard Report on Piracy. The report also includes a situationer on piracy in the Philippines as well as actions taken by the Philippine government in the anti-piracy campaign.

Piracy Incidents in the Philippines

YEAR	Philippine Report	IMB Report
1991	81	0
1992	132	5
1993	175	0
1994	174	5
1995	145	24
1996	142	39
1997	213	16
1998	132	15
1999	72	6

Table 3.1

Source: Data taken from Piracy Report of the Philippine Coast Guard and IMB Report 2000

Philippine authorities have so far failed to take any effective measures against piracy because of the current capability of agencies involved in piracy including inadequate resources, the geographical configuration and the economic condition of the country. There are not enough navy and coast guard vessels to patrol the entire sea area of the country. Further, patrol crafts are not powerful enough to compete with the pirates' fast boats with speeds of 30 to 40 knots. However, the Philippine government is actively pursuing the anti-piracy campaign with the acquisition of faster patrol crafts and institutionalization of the anti-piracy campaign by coordinating the efforts of different agencies in the suppression of piracy.

CHAPTER 4

CODIFICATION OF THE LAW ON PIRACY

The purpose of this chapter is to provide the relevant regulations on piracy based on international law in order to better understand the problem of piracy. Besides relevant codifications on piracy, this author also intends to discuss non-mandatory documentations such as international organization's recommendations in combating piracy. This chapter will not include national codifications on piracy because of the diversity and different notions applied by different coastal states. Piracy under municipal or national laws are diverse because many coastal states differ in their treatment of piracy in their territorial waters including punishment for the offence of piracy. Further, coastal states believe that crimes committed within territorial waters constitute crimes against the state and not against the international community. Thus, a problem exists when piracy incidents occur in territorial waters and international law does not recognize such incident as piracy (i.e. IMO categorizes such incidents as armed robbery). This problem shall be discussed in the next chapter.

4.1 Piracy Under International Law (Piracy Iure Gentium)

It was during the seventeenth century when the jurisdictional basis of the law of the sea was founded. During this time, States accepted the doctrine that divided the seas into territorial sea over which a coastal state exercised sovereignty and exclusive jurisdiction, and the high seas which is the area beyond the territorial sea where the doctrine of freedom of the seas prevailed. With the doctrine of freedom of the seas came the “universality principle” whose purpose is to entitle any state to

seize and punish pirates on the high seas (Henriksson, 1996). This principle was based on two reasons, namely, that pirates attacked the ships of all states indiscriminately and were thus a threat to all states, and that pirates were not subject to the authority of any state and therefore no state could be held responsible for their actions (Halberstam, 1988). The universality principle formed the basis of the international concept of piracy.

The codification of piracy in international law was started in 1926 when the League of Nations tasked a sub-committee of the Committee of Experts for the Progressive Codification of International Law to compile a report on piracy. The Assembly of the League of Nations decided to select piracy as a topic for its Codification Conference and the Harvard Law School undertook the task to prepare a draft convention. The draft convention was published in 1932 but was never adopted in any multilateral treaty. However, it was the first attempt to analyze piracy and problems that surround the subject (Dubner, 1980).

4.1.1 The 1958 Geneva Convention

It was during the first session of the International Law Commission (ILC) in 1949 when the ILC planned on creating a regime for the high seas that the subject of piracy was considered. The ILC used the Harvard draft convention as a working basis but the ILC's final report submitted to the General Assembly in 1956 was more restrictive than the Harvard draft convention. The Harvard draft convention allowed for the seizure of a pirate ship within the territorial jurisdiction of another state under certain conditions, which was not included in the ILC's report. Further, the Harvard draft convention included in its acts of piracy the possibility of a ship preparing to make attacks in territorial waters or on land from the high seas while the ILC report was restricted to piracy acts in the high seas only (Dubner, 1980).

The ILC report was used during the discussions of the United Nations Conference on the Law of the Sea held in Geneva in April 1958 and subsequently adopted by the Conference. The relevant codification on piracy is contained in

Articles 14 to 21 of the 1958 Geneva Convention on the High Seas which entered into force on September 30, 1962.

Article 14 of the Geneva Convention provides for the general principle that “all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.” All signatories to the Geneva Convention are therefore only obliged to provide the necessary support and cooperation to piracy incidents only in areas other than territorial waters of another coastal state. Present day piracy, however, knows no borders. Jurisdiction, enforcement and prosecution of piracy acts have been hampered by the restrictive codification of piracy in international law. Chapter 5 will further discuss the problem of definition.

4.1.2 The 1982 United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Third Conference on the Law of the Sea from 1973 to 1982 was convened for the purpose of producing a single treaty on the international law of the sea. The Conference resulted in the adoption of the United Nations Convention on the Law of the Sea on 30 April 1982 (UNCLOS) which entered into force on 16 November 1994. UNCLOS contains eight articles on piracy, Articles 100 to 107. These articles in UNCLOS are more or less the exact replicas of the articles in the 1958 Geneva Convention (Appendix C).

4.1.3 Piracy in International Customary Law

States that are not signatories to the 1982 UNCLOS or the 1958 Geneva Convention follow international customary law. It is true that a great majority of states have ratified either one of the above codifications. Needless to say, if a State is not a signatory, that State will treat piracy based on international customary law. The international customary law of piracy is derived from the theory that pirates are “*hostes humani generis*” which means “enemies of the human race.” That is why

piracy up to this day is considered a “crime against humanity.” Piracy is one of two offences (the other is slave trade) which fall under the principle of universal jurisdiction or the universality principle. This means that any state may apprehend a pirate on the high seas or in any other place outside the jurisdiction of any state and try him before its municipal courts (Henriksson, 1996).

The concept of piracy under international customary law, however, is a vague concept. Under international customary law, piracy was just defined as an unauthorised act of violence committed by a private vessel on the open sea against another vessel with an intent to rob or plunder (Halberstam, 1988). Such vague description of piracy produced different interpretations. For example, it was argued whether an intent to rob should be a necessary element to constitute piracy. There are instances when destruction of goods on board a vessel should be treated as piracy despite the absence of an intent to rob. There was also the question on whether the crew who commits mutiny aboard the vessel and converted the vessel and its cargo for their own use should be considered an act of piracy. These issues were left unanswered in the original definition of piracy under international customary law. It is for these reasons that popular clamor suggested a codification of piracy in international law where all states signatory to such codification will treat piracy based on a unified definition.

The codified definition of piracy in the 1958 Geneva Convention and the 1982 UNCLOS does not totally supersede the original international customary law of piracy for the very reason that there are states that may not be signatories to either convention containing the codified definitions. However, since a majority of the states are signatory to either or both the 1958 Geneva Convention and the 1982 UNCLOS, the codified form of piracy under international law remains to be the underlying concept in the treatment of piracy in international law.

4.2 International Maritime Organization (IMO)

The International Maritime Organization (IMO) is a specialized agency of the United Nations established in March 1958 which deals with all matters relating to the safety of international shipping, and the promotion of maritime standards and efficiency. The IMO is an advisory body that has no formal powers of enforcement which is left to the responsibility of the member states (Villar, 1985). It is for this reason that IMO has acted on the problem of piracy only on a consultative manner by issuing recommendations in the form of resolutions and disseminating information on piracy. It differs from conventions in that conventions are mandatory to all signatory states while resolutions are non-mandatory, leaving it up to the Administrations to implement such recommendations to their own satisfaction.

In 1979, IMO adopted a resolution relating to “Barratry and Unlawful Seizure of Ships and their Cargoes” (Res. A.461(XI)) which called for a further study of the subject in order to determine the steps IMO should take. In 1981, IMO adopted Resolution A.504(XII) on “Barratry, Unlawful Seizure of Ships and Their Cargoes and Other Forms of Maritime Fraud” based on provisions designed by an Ad Hoc Working Group in cooperation with the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC). This resolution recommended that all member states review and if necessary improve their national laws relating to the prevention and suppression of all forms of maritime fraud, examine their law enforcement procedures and take necessary action for the effective prevention, investigation and detection of maritime fraud and the prosecution of persons and bodies involved. The above two resolutions do not explicitly address piracy as it dealt generally on maritime fraud which would mean any dishonest act in connection with maritime affairs. IMB defines maritime fraud as a combination of various criminal acts such as forgery, barratry, piracy, theft and arson. However, the emphasis on such acts is more on the economic side, i.e., where one or more parties end up losing money, goods or even the vessel. Barratry, for example, is defined as the loss or damage caused to the ship or cargo by the willful act of the master or

seamen. Such actions cannot be considered as piracy as no violence has taken place. It can be deduced, however, that IMO's activities in the field of piracy started at this time since there are similarities in the suppression of maritime fraud to the suppression of piracy.

It was in 1983 when IMO devoted its attention solely on piracy. At that time, the government of Sweden submitted a report to the IMO's Maritime Safety Committee (MSC) following a piracy attack on the Swedish vessel Tarn. The report contained a proposal to formulate a resolution relating to the crime of piracy where governments should provide information on acts of piracy and should take all steps necessary to prevent the occurrence of such acts within or outside their waters. The MSC also received a report from the IMB containing the nature of piracy attacks and measure taken by governments. The MSC prepared a draft text which was used as the basis for Resolution A.545(13) on "Measures to Prevent Acts of Piracy and Armed Robbery Against Ships" adopted by the IMO Assembly in November 1983. This Resolution can be considered as the first action of IMO solely for the fight against piracy. Among others, the resolution contained four main points, namely:

- a. It notes with great concern the increasing number of incidents involving piracy and armed robbery and recognizes the grave danger to life and the grave navigational and environmental risks to which such incidents can give rise.
- b. It "urges Governments concerned to take, as a matter of highest priority, all measures necessary to prevent and suppress acts of piracy and armed robbery from ships in or adjacent to their waters, including strengthening of security measures."
- c. It "invites Governments concerned and interested organizations to advise shipowners, ship operators, shipmasters and crews on measures to be taken to prevent acts of piracy and armed robbery and minimise the effects of such acts."

- d. It requests the IMO Council to keep the matter under review and take such further action as it may consider necessary in the light of developments.

The fourth point paved the way for other resolutions on piracy as time progressed. Because of this, the MSC in 1984 decided to establish a separate and fixed agenda item in its work programme entitled “Piracy and Armed Robbery Against Ships.” The MSC started to receive reports on piracy submitted by member states and international organizations which were later disseminated starting 1986 to coastal States concerned for comments and advice on the actions taken with regard to the incidents reported.

Coinciding with the hijacking of *Achille Lauro* in October 1985, the IMO Secretariat reported that “despite international pressures, progress in stemming the increase in violent attacks at sea has been scant” and thereby concluded that “governments are not yet convinced of the need for them to take adequate preventive action” (Walkate, 1989). The UN General Assembly in 1985 considered the *Achille Lauro* incident and requested the IMO to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures. The MSC prepared a paper drafted by the U.S. Coast Guard and was subsequently adopted by the IMO Assembly on 20 November 1985 entitled Resolution A.584(14) on “Measures to Prevent Unlawful Acts Which Threaten the Safety of Ships and the Security of their Passengers and Crews”. This resolution contained guidelines for governments, ship operators, shipmasters and crews to take steps to strengthen port and on-board security against terrorist acts. It also directed the MSC to develop a more detailed and practical technical measures including both shoreside and shipboard measures to ensure the security of passengers and crews on board ships and also to design a form for reports on incidents and measures taken to prevent their recurrence. Thus, on September 1986, the MSC came up with MSC/Circ. 443 entitled “Measures to Prevent Unlawful Acts Against Passengers and Crew on Board Ships”. This document applies to passenger ships engaged on international voyages of 24 hours or more and the port facilities which serve them. It contains

recommendations concerning the establishment of a port facility security plan and a ship security plan that shall provide for measures to prevent the occurrence of weapons on board ships and unauthorized access to the passenger terminal, to the ship and to restricted areas on board. The document also provides for the appointment of a port facility security officer who is responsible for the preparation of the plans and their implementation.

Realizing that there is an alarming increase in the number of piracy incidents and that many incidents of piracy have not been reported or have not been brought to the attention of IMO, the IMO Assembly adopted Resolution A.683(17) in 1991 entitled “Prevention and Suppression of Acts of Piracy and Armed Robbery Against Ships” which urged member States to report to IMO all incidents of piracy and armed robbery against ships under their flags and invited coastal States to increase their efforts to prevent and suppress such acts committed in their waters.

In 1992, the MSC issued MSC/Circ. 597 which recommends the use of search and rescue (SAR) services and mobilization of maritime authorities so that action could be taken to provide assistance to ships under attack or to pursue the pirates with the minimum of delay (Henriksson, 1996).

Also in 1992, the IMO Secretary General Mr. William A. O’Neil established a Working Group composed of ten IMO member countries to prepare a report outlining the problem in the Strait of Malacca and providing recommendations on safety precautions and enforcement arrangements appropriate for crews, shipowners, flag States, coastal States and port States for dealing with piracy and armed robbery against ships. The report of the Working Group was considered by the MSC and in 1993, two circulars were issued, namely:

- a. MSC/Circ. 622 on Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships
- b. MSC/Circ. 623 on Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships

In the same year, the IMO Assembly adopted Resolution A.738(18) on “Measures to Prevent and Suppress Piracy and Armed Robbery Against Ships” which contained additional measures to prevent and suppress piracy and armed robbery against ships. The Resolution contained two main points, namely:

- a. Recommendation for masters of ships to immediately report attacks or threats of attack to the nearest rescue and coordination center and request such coordination centers to immediately warn shipping in the immediate vicinity of the attack, as well as inform promptly the local security forces to implement any contingency plans they have for dealing with such incidents.
- b. A request to the MSC to adopt a special signal for use by ships under attack or threat of attack.

The IMO together with the International Telecommunication Union (ITU) and the International Mobile Satellite Organization (Inmarsat) has included “piracy/armed robbery attack” as a category of distress message which ships can transmit through either Digital Selective Calling (DSC) or Inmarsat equipment by pressing a button. The message can be received automatically by shore stations and ships in the vicinity. The MSC circulated MSC/Circ. 805 dated 06 June 1997 entitled “Guidance on the Use of Signals by Ships Under Attack or Threat of Attack from Pirates or Armed Robbers” to all member States inviting and recommending the use of such communication facilities in reporting a piracy attack.

In October 1998, IMO sent a mission of experts to South East Asia and Central and South America to discuss the current piracy situation and to consider the adoption of the measures to suppress piracy as contained in MSC/Circ. 622 and MSC/Circ. 623. This was followed up by a seminar in Brazil in 1998 and in Singapore in February 1999. The seminars also aimed at considering the possibility of developing regional cooperation agreements between neighboring countries for coordinated patrols and other appropriate measures.

In May 1999, the MSC discussed the outcome of the two missions to Southeast Asia and South America and as a result incorporated corresponding revisions to MSC/Circ. 622 and MSC/Circ. 623 with the issuance of MSC/Circ. 622/Rev. 1 and MSC/Circ. 623/Rev. 1 respectively (IMO, 2000).

The table below provides a summary of all IMO resolutions and circulars pertaining to piracy:

IMO Resolutions and Circulars

Document Number	Year	Title
Res. A.461(XI)	1979	Barratry and Unlawful Seizure of Ships and their Cargoes
Res. A.504(XII)	1981	Barratry, Unlawful Seizure of Ships and Their Cargoes and Other Forms of Maritime Fraud
Res. A.545(13)	1983	Measures to Prevent Acts of Piracy and Armed Robbery Against Ships
Res. A.584(14)	1985	Measures to Prevent Unlawful Acts Which Threaten the Safety of Ships and the Security of their Passengers and Crews
MSC/Circ. 443	1986	Measures to Prevent Unlawful Acts Against Passengers and Crew on Board Ships
Res. A.683(17)	1991	Prevention and Suppression of Acts of Piracy and Armed Robbery Against Ships
MSC/Circ. 597	1992	the use of search and rescue (SAR) services and mobilization of maritime authorities so that action could be taken to provide assistance to ships under attack or to pursue the pirates with the minimum of delay
MSC/Circ. 622	1993	Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships
MSC/Circ. 623	1993	Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships
Res. A.738(18)	1993	Measures to Prevent and Suppress Piracy and Armed Robbery Against Ships

MSC/Circ. 805	1997	Guidance of the Use of Signals by Ships Under Attack or Threat of Attack from Pirates or Armed Robbers
MSC/Circ. 622/Rev. 1	1999	Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships
MSC/Circ. 623/Rev. 1	1999	Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships

Table 4.1

4.3 The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)

On October 7, 1985, *Achille Lauro*, a cruise liner of Italian registry was hijacked by four armed men in international waters thirty miles from Port Said, Egypt. This incident differed from piracy under international law (piracy *iure gentium*) for two reasons. First, piracy could not have been committed since it did not fulfill the requirement on piracy that the attack should have been directed from one vessel to the other. This two-vessel principle did not exist in the *Achille Lauro* incident because the attackers were passengers of the vessel. Second, piracy was not committed because the intent of the attackers was not “for private ends”. The attacker’s motives were strictly political when they demanded the release of fifty Palestinians in Israeli prisons.

The incident was therefore considered as an act of maritime terrorism. At that time, there did not exist any mechanism to combat maritime terrorism such as those existing for terrorist acts in airplane hijackings and sabotage as contained in the Hague and Montreal Conventions, the Hostage Convention and the Convention on Internationally Protected Persons (Henriksson, 1996). So, on September 1986, the governments of Austria, Egypt and Italy presented to IMO a Draft Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. In November 1986, the IMO Council established an Ad Hoc Preparatory Committee on

the Suppression of Unlawful Acts against the Safety of Maritime Navigation whose task was to prepare a draft convention based on the one submitted by the three governments. After a series of meetings, the agreed Draft Convention was forwarded for consideration in a diplomatic conference held in Rome on March 10, 1988. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, otherwise known as the SUA Convention, was adopted and signed by 23 states. As of November 1994, 27 states had ratified the Convention.

There is a significance of the SUA Convention with regards to piracy. To this very day, piracy remains to be a broad concept. Although piracy in international law such as the 1958 Geneva Convention and the 1982 UNCLOS provides for the legal basis for dealing with piracy while IMO Resolutions and Circulars provides for recommendations and guidelines in the treatment and suppression of piracy, there remains a loophole in the whole international spectrum of piracy in that incidents that do not satisfy the two-ship requirement and “for private ends” requirement are not considered as piracy and that no legal provision exists for the groundwork on prosecution. Take the case of the *Achille Lauro* incident. Some States have national laws that will provide for the prosecution of the perpetrators of the *Achille Lauro* incident in the ambit of committing the act of piracy. The US requested the extradition of the perpetrators because of the death of an American aboardship and charged the perpetrators for committing an act of piracy under Federal Laws.

Further, although piracy has been well defined in international law, the fact remains that piracy and armed robbery are dealt with as a single entity, i.e. contained in a single report. This author has not encountered any report that separates piracy, armed robbery and maritime terrorism. The fact remains that the international community distinguishes piracy from armed robbery and maritime terrorism, but considers the latter two as actions that should be punishable in the same level as piracy, meaning, as a “crime against humanity”.

The SUA Convention lists down unlawful acts under Article 3, i.e. “seizes or exercises control over a ship by force or threat thereof or any other form of intimidation”, but falls short of concretely including piracy. Crimes under

international law are therefore not included and that jurisdiction is limited to the state of nationality of the offender, the flag state, and the state within whose territorial sea the offence was committed. As opposed to piracy whereby any State can have jurisdiction over piracy committed in the high seas.

Perhaps the most important part of the SUA Convention is the “extradite or prosecute” clause contained in Article 10, as follows:

“The State Party in the territory of which the offender or the alleged offender is found shall ... if it does not extradite him, be obliged without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.”

States are therefore obliged to prosecute an offender, if it decides not to extradite the offender, under its national laws and shall treat the offence as a grave nature under the law of that State.

There have been instances mentioned in Chapter 3 where the problem of jurisdiction and prosecution hampered the apprehension of piracy offenders, such as the case of the *MT Tabangao* where three countries are involved, namely, the Philippines where the vessel is registered, Singapore where the vessel was found to be trading after being hijacked, and Indonesia where the vessel was apprehended.

This is perhaps the reason why even IMO recommends and urges Governments to ratify the 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Although the SUA Convention is limited to maritime terrorism, some provisions of the SUA Convention will make it easier for States to deal with piracy particularly when other countries are involved in the apprehension and prosecution of pirates. Further, for incidents not falling under the ambit of piracy can be dealt with in the SUA Convention.

The SUA Convention clearly defines the offenses and obligates some states to establish jurisdiction. Further, it obligates any state within whose territory the perpetrators are found to either extradite them to another state or to bring them

before its own courts. In contrast, piracy under the 1958 Geneva Convention and the 1982 UNCLOS do not obligate any state to try pirates or to extradite them to another state. This means that in the treatment of piracy, a loophole exists on the prosecution process.

As an endnote to the discussion of the SUA Convention, maritime terrorism or for that matter, all acts of terrorism today are considered crimes against humanity. The SUA Convention is limited only to States that have ratified the convention. Unlike piracy which is based on international law, either customary or through the 1958 Geneva Convention or the 1982 UNCLOS, the SUA Convention does not have the same effect of universal jurisdiction such as that of piracy. It is worth noting that only a handful of Governments have ratified the SUA Convention although terrorism is considered a global threat today.

CHAPTER 5

CONTENTIOUS ISSUES AND POSSIBLE SOLUTIONS

This author could not have said it better when the IMO report “Piracy and Armed Robbery at Sea” mentioned that “one problem that has emerged in recent years is that uncertainties about the law have meant that persons suspected of piracy have often been released without charge” (IMO, 2000).

This chapter will discuss the problems and obstacles hampering the anti-piracy campaign, particularly on the conceptual definition of piracy, the root cause of piracy, dilemma on preventive measures and countermeasures by ships, and difficulty in enforcement and prosecution by states. Possible solutions in overcoming these obstacles will also be discussed.

5.1 Conceptual Definition of Piracy

Article 101 of the 1982 UNCLOS defines piracy as:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:*
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft*
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State*
- (b) any act of voluntary participation in the operation of a ship or of any aircraft with knowledge of facts making it a pirate ship or aircraft;*

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

There is a substantial difference between piracy today compared to piracy in the olden days. Besides, historical piracy that existed in the past was directed mostly against merchant vessels. Today, because of increasing world trade and increase of merchant shipping as well as reliability in water transport as a primary mode of transportation of goods and passengers for various reasons primary of which is less cost, piracy today is directed to more types of vessels, with varying reasons from the most common robbery to the most sophisticated syndicate activity. Thus, we need to analyze whether the definition of piracy is applicable today as it was when the codification of piracy in international law was created.

The problem of the conceptual definition of piracy in international law (piracy *iure gentium*) can be best approached by explaining some key words or phrases in the definition as provided by the 1982 UNCLOS that proves to be vague or needing of further explanation.

5.1.1 “any illegal acts of violence or detention, or any act of depredation”

There is no question that piracy is committed by an illegal act, be it with the use of force or not. Violence does not necessarily have to be a necessary element in the determination of piracy since the definition includes the word “or” which means that detention or any act of depredation can happen without the presence of violence, or vice versa. The underlying problem here is that an act of depredation without violence or detention can be considered as piracy. Depredation in its broadest meaning can include acts of theft, irregardless of its magnitude. Therefore, any simple acts of theft such as an unarmed perpetrator climbing aboard a vessel from an outrigger and stealing, say, some paint in the paint locker room or some mooring lines, can be considered as an act of piracy even though such actions are in most cases only considered as a felony. This simple act of theft should not be considered

as piracy. If it was, this means that if national law regulates that piracy should be meted the punishment of *reclusion perpetua* or even death, the simple act of theft such as the one described above might be considered as a crime of piracy as the illegal act itself satisfies all the other requirements of piracy. This author believes not. We should draw the line when you compare acts of theft in terms of magnitude, especially when no violence or threat to life is committed. For example, one should compare the stealing of cans of paint or mooring lines with the stealing of the ship's safe containing huge amounts of the crew's salary without the knowledge of the master and the crew. There is, therefore, a vague notion existent in the phrase "any illegal acts of violence or detention, or any act of depredation" because it does not provide for the magnitude of such illegal action.

Another flaw is the distinction between robbery and piracy. IMO which follows the definition of piracy based on the 1982 UNCLOS deems it fit to limit piracy as acts committed in the high seas and classifies those committed in territorial waters or waters other than the high seas as armed robbery. A person other than a passenger or crew of the same vessel, for example, who robs the master's ship safe, be it with intent to commit violence or with threat and intimidation, may be considered as piracy rather than armed robbery. This author believes that there is a flaw in the definition because such actions in criminal law are considered as robbery and not piracy. I believe that there is a necessary element in the definition of piracy that should be included. There should be an act to take control of the vessel as one of the elements to distinguish robbery from piracy. Again, the gravity of an offence is of primary importance in distinguishing piracy from armed robbery. To take control or attempt to control a vessel by a person other than the master of a vessel should be a necessary element in the determination of piracy.

A master who connives with a syndicate and commandeers a vessel to a port other than the intended destination, and sells the goods as well as converts the vessel to a phantom ship is not piracy *iure gentium* but barratry which is covered by appropriate IMO resolutions. This should be clearly distinguished because barratry can be committed without any act of violence, detention or depredation but only an

act to commit fraud, i.e. when the crew connives with the master to carry out the illegal act. However, when a crew or passenger takes control of a vessel from the master through either violence, detention or depredation, such act should be considered piracy. The element of a two-ship requirement shall be discussed later in this chapter.

The phrase “any illegal acts of violence or detention, or any act of depredation” should include an act to control the vessel as a mandatory element in the definition of piracy. Further, the act of depredation should be limited by listing down such act of depredation in terms of gravity for it to be a requirement in the definition of piracy.

5.1.2 “committed for private ends”

The “for private ends” criterion was adopted by the 1958 Convention from the Harvard draft convention. The reason why the Harvard group excluded political acts in the definition of piracy was not because of the intention of limiting the piracy definition but because the group encountered problems at that time in determining the status of insurgents (Henriksson, 1996). Apparently, there did not exist in international law any principles to distinguish them from belligerents where the law of war is used and what treatment should be given to insurgents. It was apparent that the Harvard group faced a blank wall in considering if insurgents should be treated, in the purview of piracy, as committing the act of piracy or a lawful act of war if they were treated as belligerents. To resolve the issue, the Harvard group decided to limit the piracy criterion to “for private ends”. Accordingly, it would seem that the “for private ends” criterion was done in haste rather than careful analysis because the group did not solve the issue but rather went around the issue by limiting the piracy criterion to “for private ends”.

Some scholars believe that the rationale for excluding acts of insurgents in the definition of piracy is that their actions are only directed against a particular state they are in rebellion with and cannot therefore be considered as a crime against humanity. It was also argued that if the said insurgents direct their attack against a

neutral state, then and only then can it be considered as piracy. What these scholars failed to consider is the determination of a “neutral state”, whether they were referring to the flag or nationality of the vessel or the citizenship of persons within the vessel who were harmed as a consequence of the piratical act. The example of the *Achille Lauro* incident and the insurgency problem in the Philippines as described below illustrates this problem.

In analyzing the “for private ends” criterion, one should look into who commits actions other than “for private ends” and what political motives are exempted in the piracy definition.

The weakness of the criteria “for private ends” can best be described by the *Achille Lauro* incident where the vessel was commandeered in 1985 by members of the Palestine Liberation Front (PLF), a splinter group of the Palestine Liberation Organization (PLO) who initially planned to attack the Israeli Port of Ashdod but later demanded the release of fifty Palestinians held in Israeli prisons in return for the safe release of the ninety-seven passengers who were kept as hostage on board the ship (Henriksson, 1996). The 1982 UNCLOS definition of piracy excludes political acts. The PLO were considered as recognized insurgents and acts committed by recognized insurgents are assumed to be based on a political motive. Some authors believe otherwise. They claim that the acts committed, particularly the murder of a disabled American citizen, was based on a pure malicious motive or a desire for private revenge instead of political reasons. Despite the initial purpose of the hijackers to attack Israel, the seizure of the ship and the murder became a “private revenge act” which the hijackers committed when they realized that their initial purpose had been frustrated (Halberstam, 1988).

A consideration in the determination of the “for private ends” criterion is when the political motive is directed to a person whose citizenship is other than the country where the political motives should have been directed. In the *Achille Lauro* incident, the PLO’s motive as a recognized insurgent is to retaliate against its enemy, Israel. In the process, however, an American citizen is murdered. Assuming no conflict exists between the PLO and the US, the act of murdering an American citizen should

not be considered a political motive because the US was not its target of retaliation in the first place.

Also, maritime trade and maritime transport is a complex system where political identity is not determined. The *Achille Lauro* incident shows that irregardless of political motives, the murder of an American citizen when the US is not a target for such political motive, shows that “for private ends” remain to be a vague concept when it exempts recognized insurgents and belligerents from committing an act of piracy. Piracy in international law excluded acts of belligerents because belligerents follow the laws of war. International law, however, failed to distinguish insurgents and belligerents. For belligerents where the law of war follows, their acts should only be directed to vessels whose nationality they are at war with. For insurgents, their actions should only be directed to vessels of the state they are fighting, i.e., MILF and Abu Sayaff attacking Philippine vessels. Piracy in international law failed to understand that vessels today are complex in nature. A vessel may be registered in one country (to establish nationality of vessel) but owned by a shipping company of another country. Such vessel can have crews of different nationalities. The same holds true with cruise vessels with passengers of different nationalities. If an illegal act is committed to a vessel owned by the state for which a recognized insurgent group is fighting with, does it necessarily follow that such insurgent group can exact an illegal act to the crew or passengers who have a different nationality?

There is also the issue of when the motive is political but the actions itself does not constitute a political act but an illegal act of murder, robbery and rape. In the Philippines, for example, the Moro Islamic Liberation Front (MILF), the Moro National Liberation Front (MNLF) and the Abu Sayaff are considered as recognized insurgents by the Philippine government who are waging a war to create an autonomous Muslim country in the Philippines. Just recently, the Abu Sayaff kidnapped foreign tourists of different nationalities from a resort in Malaysia and brought them to an island in the Philippines. While the motive is political, i.e., calling for an independent Muslim country in Southern Philippines as well as other

demands, the kidnapping itself included a ransom demand of an unspecified amount of money. Further, the act of kidnapping was not directed to a citizen of the Philippines but to citizens of different nationalities. The Abu Sayaff and the MILF have been engaged in kidnapping and extortion activities in the past years. Piracy incidents in the Sulu Sea have been attributed to these groups who robbed passengers at gunpoint, commandeered the vessel and its cargoes, murdered and mutilated bodies as well as raped women passengers. These groups apparently resorts to kidnapping for ransom, robbery and extortion activities for the purpose of financing their political organization, so they say. Assuming that the illegal act is committed in the high seas, such illegal act by a recognized insurgent group cannot be considered as piracy *iure gentium* for the very reason that the act was not committed “for private ends” according to the definition.

There is, therefore, a flaw in the definition of piracy in that “for private ends” is a vague terminology whereby insurgents and belligerents can be exempted in committing piracy. While it is true that in historical piracy, actions for political reasons have been exempted, this is not the case for modern piracy where insurgents hide under the cloak of international law when a flaw exists, so that their actions will not be considered as piracy.

This author believes that the “for private ends” criterion should be removed from the definition of piracy to be in line with present day realities of piracy. To overcome the problem associated with this criterion, IMO came up with the SUA Convention as explained in Chapter 4. The SUA Convention which focuses on maritime terrorism has some similarities in the definition of piracy except that maritime terrorism is committed for political ends and that the act of maritime terrorism can be committed without the “two-ship requirement” in piracy. This is because terrorists usually pose as passengers aboardship. This author tends to agree with some writers who believe that piracy should include acts of maritime terrorism, including acts of insurgents and that the SUA Convention, although presently is a helpful instrument in the jurisdiction and prosecution problem associated with piracy and armed robbery, should be incorporated in the international law of piracy (piracy

iure gentium) because there is no distinction between a pirate and a maritime terrorist. Both are enemies of mankind and both commit crimes against humanity.

5.1.3 “by the crew or the passengers of a private ship or a private aircraft, and directed ... against another ship or aircraft, or against persons or property on board such ship or aircraft”

This criterion specifies that in order for an illegal act to be considered as piracy *iure gentium*, the “two-ship requirement” should be satisfied. This means that the illegal act must be committed by persons coming from another vessel who boards the other vessel to perform the illegal act of violence, detention or depredation. In order for piracy to be committed, there should consist an attack from one ship against another.

It is not clear why this criterion was included in the definition of piracy in international law. Perhaps it was because historically, piracy was only committed by a pirate ship against another vessel. This, however, does not hold true in modern day piracy. Some countries have included illegal acts of the crew of a vessel as an act that can constitute piracy. For example, England treats mutiny as an act of piracy. The situation today is that more and more illegal acts of violence, detention or depredation are in fact committed by the crew or passengers of a vessel. The *Achille Lauro* incident best portrays how an illegal act can be committed without the presence of another vessel because the pirates are in fact passengers of the hijacked vessel.

Article 101 paragraph (a)(ii) mentions that the illegal act, so as to constitute piracy, is directed “against a ship, aircraft, persons or property in a place outside the jurisdiction of any State” (emphasis added). This statement differs from paragraph (a)(i) which is more precise in saying that the illegal act is directed “on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft” (emphasis added). While the latter clearly specifies that another ship is

involved, the former doesn't use the word "another", making the reader believe that the paragraph (a)(ii) can refer to the same ship or vessel.

Another evidence to support the claim that the two-ship requirement is not necessary in defining piracy is the statement that the illegal act is committed "by the crew or passengers of a private ship" (emphasis added) and directed, as per paragraph (a)(ii), "against a ship." In the analysis of the statement, it can be deduced that passengers of a ship (the pirate ship), in a practical sense, could not have directed a piracy attack against another vessel because they have no control over the pirate ship to order it to come alongside the victim ship. Therefore, the use of the word "passenger" in the phrase could have meant that passengers of the same vessel can commit piracy (Menefee, 1990), because a passenger cannot attack another vessel if he does not have control of a pirate ship.

Using the same line of thinking, common sense dictates that piracy committed "by the crew or passengers of a private ship or a private aircraft" (referring to the pirate ship/aircraft) and directed "against another ship or aircraft" (referring to the victim ship/aircraft) is a misnomer in the sense that a pirate aircraft, for the sake of analysis, could not have committed piracy against another aircraft, unless there is already technology to transfer a pirate from one aircraft to another. It is for this reason that, when referring to piracy committed by an aircraft, it could only mean that the said piracy must have been committed on the same aircraft, either by the crew or the passenger of the same aircraft.

As for the use of the word "crew", the same reasoning applies. The crew of a pirate ship can commit piracy by attacking another vessel as mentioned in paragraph (a)(i) but also, using the same reasoning, the crew of a vessel can attack "a" ship, a vague statement that could also mean the same vessel. This particular reasoning on the word "crew" in the piracy definition is subject to debate because in international law, there is a clear distinction between piracy and mutiny. Further, the Harvard Group from which the 1982 UNCLOS definition is based and from which the ILC shares the same opinion, clarifies that more than one ship has to be involved in the action. The Harvard Group explicitly stated in its comment that acts of mutiny is a

domestic matter which falls under the laws of the flag state only and which cannot be considered as piracy except when the mutineers use the vessel to commit attacks against other shipping (Henriksson, 1996).

The ILC mentioned that “acts committed on board a ship by the crew or passengers and directed against the ship itself, or against persons or property on the ship, cannot be regarded as piracy” (Harlow, 1986). This seems to be the majority opinion by most authors. Acts such as mutiny, internal seizure by the passengers and robbery of one passenger by another, are not included in the definition of piracy. The argument is that to include the illegal acts of the crew or passengers on the same vessel might be construed that every unlawful act of violence or depredation committed entirely within the ship would be under the universal jurisdiction of all states. It is believed that internal offenses committed on board a ship should, as long as it remains under the protection of the flag state, be suppressed and punished by this state only, unless the flag state asks for assistance by other nations (O’Connell, 1984).

Despite popular opinion, this author believes otherwise. First of all, to limit piracy so as not to include internal offenses just because such offence is the primary responsibility of the flag state is not in line with what modern piracy is all about. Popular opinion fails to analyze, perhaps because piracy syndicates did not exist during those times, that in modern day piracy, pirates can in fact be those posing as passengers aboard the same vessel. The crew could also be members of a piracy syndicate. To distinguish it from barratry, i.e. when the master defrauds the ship owner by conniving with a syndicate to sell the ship and cargo, in order for the crew to commit piracy, the act of taking control of the vessel from the master by means of an unlawful act of violence, detention or depredation should be present as recommended in Chapter 5.1.1.

As mentioned above, there is that fear that all illegal acts aboard the same vessel without the presence of another vessel (the pirate ship) might be construed as an act of piracy. For example, a passenger robbing another passenger, a passenger murdering another passenger, a crew member stealing the ship’s safe, might be

construed as an act of piracy. In order to exclude such actions, this author recommended in Chapter 5.1.1 that as part of the requirement in the determination of whether a piracy act was committed, the act of taking control of a vessel or intention to take control of a vessel should be a necessary requirement in order to commit piracy. This way, unlawful acts in the piracy definition will be selective, meaning, not all illegal acts fall under the purview of piracy.

This author agrees with the opinion that how an offender arrives aboard a victim ship, be it with the use of a pirate ship or posing as a crew or passenger aboard the vessel, is not necessarily relevant as long as their purpose is to seize the ship by use or threat of violence, detention or depredation.

5.1.4 “on the high seas” or “in a place outside the jurisdiction of any State”

Article 86 of the 1982 UNCLOS describes the high seas as “all parts of the sea that are not included in the exclusive economic zone (EEZ), in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.” Here, therefore, lies the flaw when Article 101 defines piracy as acts “on the high seas.” This would mean that piracy in international law is only committed in the high seas, excluding territorial waters and the EEZ.

When a piracy attack is committed in internal or territorial waters, the crime of “piracy” will fall under national or municipal laws, if such provisions in local laws of a State provide for such a crime. However, when the crime of “piracy” happens in the EEZ, a State cannot exercise her sovereignty or exclusive jurisdiction by applying national or municipal laws because the EEZ provides for limited rights of a State such as the exclusive rights to explore, exploit and conserve natural resources which may be found in the waters and the seabed of the EEZ. In such case, it seems that piracy can be covered by national or municipal laws when the crime is committed in internal waters while international law covers the act of piracy in the high seas. However, based on Article 101 of UNCLOS, the act of piracy seems not included in the EEZ.

The term “high seas” as it refers to piracy in Article 101, seems to be a misnomer which the authors of the 1982 UNCLOS failed to address. Instead of changing the word “high seas” as it applies to piracy, the authors clarified the matter by virtue of Article 58(2) (Appendix C) which states that “articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with the other provisions of this Convention.” Article 58(2) therefore clarifies the issue that when referring to the definition of piracy in Article 100, piracy can be committed as well in the exclusive economic zone.

To further confuse the issue, Article 101(a)(ii) mentions that piracy can be committed “in a place outside the jurisdiction of any State.” But the state maintains jurisdiction to a certain extent in the exclusive economic zone. But Article 58(2) clarifies that piracy can be committed as well in the EEZ. Hence, the phrase “outside the jurisdiction” in the definition of piracy in international law only means outside the territorial sea.

It would have been judicious for the authors of the 1982 UNCLOS to avoid such misinterpretation by just stating that piracy is committed outside territorial waters of a State rather than mentioning the high seas.

As mentioned in Chapter 3, it would seem, based on statistics, that majority of modern day piracy incidents occur in territorial waters thereby excluding them from the definition of piracy in international law. The reason for its exclusion is because territorial waters of a coastal State are subject to the sovereignty and exclusive jurisdiction of that State where national or municipal law applies. Such exclusion has given rise to problems particularly when developing countries do not have sufficient resources to fight piracy. Pirates tend to commit piracy attacks and then hide or seek “refuge” in territorial waters where they know that such State does not have the means and resources to apprehend them. This problem is further exacerbated by the doctrine of hot pursuit in Article 111 of UNCLOS (Appendix C) which provides that a State can exercise the right of hot pursuit against a pirate ship only if such pursuit commences in its territorial waters and may extend to the high

seas only if such pursuit remains uninterrupted. In any case, such pursuit ceases when the pirate ship enters the territorial waters of another State. Take the case of piracy incidents in the Malacca Straits which lies within the jurisdiction of three States, namely, Malaysia, Indonesia and Singapore. A piracy incident may occur in the territorial waters of Singapore where Singapore authorities have the means and resources to combat piracy. However, a pirate ship can quickly seek refuge in neighboring Indonesia where Singapore authorities cannot exercise the right of hot pursuit and where Indonesian authorities do not have sufficient means and capability to apprehend these pirates.

It seems that to solve the problem, the definition of piracy should not be limited to the high seas criterion but should include territorial waters. Some authors contend that such cannot be done because no State would allow an encroachment on its sovereignty when another State pursues a pirate ship in the territorial sea of another State.

This author believes that there is a remedy to the issues raised. International laws are made because of a collective agreement between States. By being a signatory to an international instrument, a State is obliged to follow provisions as contained in such instrument. National laws are in fact created and amended to suit international law. In time, international law becomes customary law when majority of the States accept an international law as their own national law. To define piracy so as to include acts committed in territorial waters is not an infringement of sovereignty of a State. If this was the case, then how come international conventions are made mandatory to States who have ratified such instrument and incorporated such convention in their national laws? This is not considered as an infringement on a State's sovereignty when such convention provides regulations for vessels and crew of a particular state. This author does believe that just as States periodically surrender certain specific rights when they ratify treaties, so should they be able to also agree to defining an illegal act as piracy even when the same is committed in, or close to, territorial waters.

International law only defines what a piracy act is, irregardless of boundaries, so as to provide uniformity. This is precisely why the doctrine of hot pursuit mentions that the pursuit ceases upon the entry of a pirate ship into the territorial waters of another State. While Article 100 mentions the duty of each State to cooperate in the repression of piracy, it does not allow a State to intrude in another State's territorial waters without the permission of that State.

International law has universal jurisdiction; yet, it fails when it limits the definition of piracy as acts committed in the high seas. The universality principle ceases to operate when majority of piracy acts are in fact committed in territorial waters. The national law of a State may differ from the national law of another State in the treatment of the act of "piracy" in territorial waters. The solution would therefore be that to achieve the universality principle, a collective agreement between all States should be made to achieve uniformity. This can only be done by re-defining piracy in international law so as to include acts in territorial waters.

IMO has consistently said that the Malacca Straits is a piracy prone area. Yet, the Malacca Straits is within the territorial limits of three countries. Further, IMO also tries to classify piracy and armed robbery. Yet, it solves the problem of piracy and armed robbery as if it were one and the same concept. The fact remains that the illegal act of violence, detention or depredation against a ship is considered as piracy in international law as well as national law, irregardless of where the crime is committed. It is in fact beneficial if all national laws of all States are based on international law for uniformity in definition, enforcement and prosecution of acts of piracy both in territorial waters and in the high seas.

5.2 Root Cause of Piracy

Perhaps the best solution to overcome all types of problems relating to piracy is to discern the root cause of the problem or "strike at the root" as the saying goes before a problem gets out of hand. In the case of modern day piracy, it may not be that easy to solve the problem by eradicating the root cause.

5.2.1 Poverty and the Amateur Pirates

As discussed in Chapter 2, most piracy and armed robbery incidents occur in territorial waters. Piracy hotspots in East Asia to include the Malacca Strait, Indonesian waters, the waters bordering the Luzon-Hainan-Hong Kong triangle, as well as the waters in Southern Philippines, belong to developing or underdeveloped countries or countries whose great majority are the poor, some of who resort to crime for their subsistence. The economic situation prevailing in the region seems to be an underlying reason why piracy flourishes in the area. Piracy in these areas are mostly perpetrated by small fishermen who are stricken by poverty and have thus resorted to piracy acts to sustain their livelihood. Needless to say, incidents of piracy perpetrated by these people are not of a magnitude that harms the shipping community for reasons that goods, valuables, ship's equipment lost to these pirates are relatively minimal in terms of value. Furthermore, this type of pirates do not usually confront the crew as they are usually armed only with knives and small firearms, and therefore, the intention to steal is of primary concern. Resorting to armed confrontation with intention to rob, to harass the crew or to commit murder, would be incidental. Although piracy attacks committed by this type of pirates are of less value to the shipping community, the frequency of such attacks cannot be discounted.

Poverty as a root cause is hard to eliminate because there are so many factors to consider, with piracy being the least among them. It is an inherent problem in areas of developing countries and piracy is just one of so many problems associated with poverty. To eradicate poverty is not an easy task. Poverty alleviation would mean the improvement of a State's economy through infrastructure, transportation, communications, social security, education, and other major areas affecting poverty.

Thus, poverty as a root cause in piracy can only be eradicated through time and through economic prosperity which is an impossible task as a short-term solution.

5.2.2 Organized Syndicates or Professional Pirates

In contrast to poverty which is one of the root causes of piracy that cannot be easily solved, the presence of organized syndicates as a root cause can be eradicated. As discussed in Chapter 2, piracy syndicates have been prevalent in Asia. Such syndicates are not limited by national boundaries as they are well connected to other organizations in other countries. Take the case of the hijacking of the *MT Tabangao* tanker in the Philippines in 1991. This vessel was hijacked in connivance with the master and was converted into a phantom vessel. Government authorities were later able to trace the renamed vessel which was plying between Indonesia and Singapore. The capture of the suspected pirate revealed that this incident was only one of five other incidents perpetrated by the same group. The conversion of a pirated vessel into a phantom ship with papers of registration that look as genuine as those issued by authorities would mean that this syndicate had connections with corrupt government authorities in order for them to get hold of registration papers of an unknown name. Furthermore, a vessel pirated from one country can be easily registered and reflagged to another country which would indicate that this syndicate had members all around Asia for them to conduct their business elsewhere such as in Singapore and Indonesia. For example, some flag states or open registries offer temporary registration of ownership of a vessel with no questions asked as long as the fee for registration is paid.

Another factor to consider is the selling of pirated cargo. Usually, cargoes are worth more than the ship. Syndicates have been known to pirate a vessel, convert the vessel into a phantom ship by renaming and furnishing it with falsified registration papers and certificates from another country, and then selling the cargo to unscrupulous buyers of yet another country. This was the case in the hijacking of

MV Alondra Rainbow which was hijacked in 1999 as she sailed from Indonesia to Japan. The said vessel was able to change its name to *Mega Rama* flying the Belize flag. After her capture by the Indian navy as she sailed in the Arabian Sea, it was discovered that \$4.5M worth of aluminum ingots were sold/discharged in either Thailand or Cambodia.

The problem with the sale of stolen cargo is that cargoes can be legitimately sold to as many persons by just the passing of hands of a bill of lading, even during the transit of the cargo. What was originally cargo destined for a certain consignee reflected in the bill of lading can be easily sold to another person or multitude of persons by just passing on the bill of lading. What is difficult to trace is the fact that no written document is necessary to transfer a bill of lading to another person. Further, a bill of lading can be easily forged so as to make it appear that it is the original bill of lading intended to a rogue buyer of stolen cargo.

Perhaps the best way to eradicate piracy syndicates is to deny them the access of selling a vessel and its cargo. An honest shipping owner or a buyer of stolen cargo should know better than to buy something of lesser value than its intended commodity price. When a syndicate sells a vessel or its cargo at a lower price than its present market value, the intended buyer should already be suspicious and should conduct his own investigation before buying such vessel or cargo. This may not be the case with unscrupulous buyers who desire only to make profit, irregardless if such was done illegally.

A shipping owner, for example, should be held criminally liable if he buys a vessel without conducting a proper check with concerned authorities. A buyer of cargo should check on the bill of lading before buying stolen cargo to make sure that the said cargo is indeed intended for legal sale to him. One good method in checking the legitimacy of a cargo is to check the Certificate of Origin. A Certificate of Origin is a document required by some but not all countries to determine the manufacturer of a product for export and determine where the product originated (Appendix D). This Certificate may be forged by syndicates. However, this can be the best way for a buyer to check the origins and legitimacy of the cargo before buying it from the

syndicate. While a Bill of Lading is regulated by international regulations, a Certificate of Origin depends only on the custom regulations of the importing country. It is because of its advantage in tracing a cargo that it should be a mandatory requirement in world trade. The World Trade Organization (WTO) can best address this issue.

An unscrupulous buyer of stolen cargo should also be held criminally liable if he buys stolen cargo without conducting the necessary checks provided by law. Higher punishment as provided by law can deter the would-be buyer from buying stolen cargo.

To prevent the syndicate from freely selling a vessel and its cargo is a daunting task that needs the full cooperation of all States. This can only be achieved through regional or international cooperation which will be discussed later in the Chapter.

5.3 Preventive Measures and Countermeasures for Ships

This author does not intend to discuss and provide new measures and countermeasures for ships in preventing piracy as there are a magnitude of recommended measures provided by countless organizations such as IMO, IMB, BIMCO (Shipmaster's Security Manual), ICS (Pirates and Armed Robbers A Master's Guide), to name a few. Perhaps the most recent among these recommendations is the IMO MSC/Circ. 623/Rev. 1 pertaining to the Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships which provides for steps to be taken by the shipowner and crew to reduce the risk of piracy attacks, and appropriate responses to an attack.

Most important among these recommendations is the establishment of a ship security plan that would contain the recommendations given by these organizations. Instead, this section would rather focus on recommendations that are either obviously highly advantageous or, in the opinion of others, totally outrageous.

5.3.1 Reporting Piracy

Under-reporting has been a problem that has prevented authorities from analyzing piracy incidents in the region so as to provide a better understanding of the problem. Under-reporting also hampers the repression of piracy because government agencies cannot react on a specific piracy incident. As discussed in Chapter 2, at least one half of all piracy incidents are not reported for various reasons usually connected to perceived advantages to the shipowner.

IMO Circular 623 Rev. 1 provides for the format of reporting a piracy attack to authorities. Further, reports have to be directed to the nearest Rescue Coordination Center and to the IMB Piracy Reporting Center for proper coordination and response of government authorities concerned. Yet, in most piracy incidents, the vessel's master alerts the ship owners first to seek guidance rather than the concerned authorities in the event of a piracy attack. Unless we persuade shipowners to collectively support the drive against piracy by reporting piracy incidents to the proper authorities, the enforcement against piracy will continue to suffer.

5.3.2 Firearms On Board

The IMO and the IMB discourage the use and carriage of firearms on board vessels. IMO Circular 623 states that the carriage of firearms on board encourage attackers to carry firearms thereby escalating an already dangerous situation. Furthermore, the use of firearms require special training. But all modern piracy incidents today are carried out by armed attackers. If so, then firearms on board does not encourage attackers who already have weapons such as knives, pistols and even sophisticated firearms in the first place.

Today, the carriage of firearms, although not recommended by IMO, depends on the vessel's registry and port of destination. Some States have allowed the

carriage of firearms onboard the vessel and secured by the Master. Yet other States do not allow vessels entering their port to carry onboard firearms, or if such vessels do have firearms onboard, these firearms are secured by port authorities or allowed to be kept on board on a locked location.

To overcome the anxiety caused by the carriage of firearms on board a vessel and IMO's recommendation that firearms offer an attractive target for an attacker, a shipowner can, for example, require her vessels to employ additional crew such as a security officer or security guards when the said vessel sails on piracy prone areas or provide for special training on the use of firearms by a specific member of the crew such as the chief mate or master.

The carriage of firearms onboard a vessel remains controversial and therefore, it is up to the shipowner, the State of registry, or the port authorities, to recommend or allow the carriage of firearms. It remains controversial in view of the fact that it is widely perceived that the carriage of firearms may not act as a deterrent to piracy attacks. Further, there have been organized piracy attacks that are perpetrated by heavily armed pirates against which the crews are no match.

Pirates generally prefer vessels that appear to be easy prey. Yet, a trained crew or the use of additional crew such as security officers or guards who have special training on the use of firearms and ways to combat piracy might be a better option than being defenseless against these attackers. A simple analogy to this theory is that companies such as banks, jewelry stores, large companies or any other business companies who need to protect their interests hire security agencies to provide security guards. As in the case of a bank with security guards, the interest is to provide a deterrent but when a robbery gang decides to rob a bank with as much firepower as to overcome the security guards, then and only then can the security guards decide not to fight to protect the safety of the people inside the bank. The presence of security guards in a bank did not "escalate a dangerous situation" as referred to by IMO when firearms or resistance to pirates are done. A shipping company is also one such company where the shipowner has to protect not only his interest, that is the ship, but also the cargo and its crew. A defenseless crew needs to

be protected. The provision on security guards, despite being minimal as not to provide adequate resistance to heavily armed pirates, is, just like in any other company, a deterrent no matter how small that deterrent may be.

When the policy of a shipowner is not to resist attackers in order to avoid the risk of an escalation of violence, ships tend to be easy targets for piracy and are willful victims of piracy even though the piracy act has not yet been consummated. Having a passive attitude to the piracy problem may be a factor on the proliferation of piracy attacks since pirates know that ships offer no resistance at all.

Other options other than firearms are available in the market. Private security firms market a range of security equipment designed to detect or deter intruders, such as infrared detector alarms, detachable barbed wires and tear gas canisters. While IMO does not recommend the carriage of firearms onboard, it doesn't provide any recommendation or guidelines on other security equipment.

5.3.3 Hiring Commercial Anti-Piracy Services

To fill in the lack of enforcement provided by maritime authorities in the fight against piracy mainly because of insufficient resources, some companies are cashing in on the need for anti-piracy services by offering the services of professionally qualified people who are former military personnel, anti-terrorist soldiers or mercenaries. There are a number of specialized security companies dealing with anti-piracy, most notably, Anglo Marine Overseas Services, Marine Risk Management, Satellites Protection Services and International Maritime Security, who offer training as well as the use of ex-military personnel and anti-terrorist personnel. One company, for example, offers the use of former British Army Gurkha soldiers. Further, some companies provide more services such as post piracy actions. Marine Risk Management (MRM) also provides other services such as the recovery of ships and cargoes and the rescue of crew victims of pirate attacks (Lloyd's, 1999).

As with the carriage of firearms onboard, the use of commercial anti-piracy services remains controversial. Proponents believe that the use of professional anti-

piracy services is a good deterrent against piracy while others believe that the use of armed resistance might further escalate a piracy attack to the detriment of the crew.

A burden to the shipowner is the added cost it would take to hire a commercial anti-piracy service. The cost of professional services could reach up to \$1,500 per day for each security personnel hired. While this author believes that firearms onboard might be a good option as long as steps are taken to secure such firearms and training and supervision are required for the handling of such firearms, the use of commercial anti-piracy service might be a grossly overrated solution where the motive is set entirely on profit for such companies offering these type of services. As mentioned earlier, an alternative is the use of security officers or security guards such as those used in cruise ships and passenger liners or specialized training on key crews such as the master and chief mate in the use of firearms. IMO MSC Circular 623 Rev. 1 provides a recommendation to shipowners to consider enhancing security watches when their ship is in piracy prone waters. While IMO does not recommend the carriage of firearms aboardship, it seems contradictory to the above recommendation when IMO recommends the use of security watches. A shipowner will, for example, based on the above IMO recommendation, hire a security agency to provide a ship security officer plus around two security guards who will act as security watches when the ship travels through piracy prone waters.

While there are a number of conflicting views for or against the use of commercial anti-piracy services, shipping industry sources predict a rising trend in the use of such services primarily because of the increasing cost related to the loss of one ship due to piracy. It is the opinion of this author that while the hiring of such specialized security services as IMO believes, “can escalate an already dangerous situation”, it would still be a rather good deterrent. However, such use can entail larger costs to the shipowner who might realize that such added cost was an overreaction on their part when other alternatives such as the use of security guards and a security officer from an ordinary security agency, i.e. those provided in passenger liners, or the training of a specific crew in security matters as well as the handling of firearms, can provide the same measure of deterrent.

5.3.4 Tracking Devices

The International Maritime Bureau (IMB), in collaboration with the Collecte Localisation Satellites, a world leading satellite tracking system operator, announced the availability of a ship tracking system, SHIPLOC, beginning in 1999. This anti-piracy or anti-hijack ship tracking system is a satellite-linked equipment that enables the shipowner to keep track of a vessel's location via the use of the internet. The SHIPLOC transmitter is firstly installed aboardship in a hidden location that is not revealed to the crew for their protection. There have been instances where piracy cases were actually frauds committed by shipowners who make bogus insurance claims. As such, the transmitter's location can also be left unknown to the shipowner with the intention that the shipowner is informed of consequences when the location of the transmitter is divulged.

The principle of the SHIPLOC is similar to the anti-theft device used in the United States for private and commercial vehicles where a vehicle tracking device is installed to provide the location of a stolen vehicle.

SHIPLOC is a relatively inexpensive equipment that uses a computer and an internet connection with a low monthly rental of between US\$150 and US\$310. This author believes that SHIPLOC is a revolutionary development in the campaign against piracy. The system is recommended by the IMB which is at the forefront in the fight against piracy. In fact, it is the only equipment officially endorsed by IMB. Other commercial transmitters or tracking devices such as the Ship Trac offered by the Marine Risk Management company, are also available in the market today but do not offer the same advantage as the inexpensive SHIPLOC system. The primary concern of a shipowner is cost and when one system is comparable with the other at a much lower cost to the shipowner, then the shipowner will tend to elect the more economical alternative. Perhaps, the greatest disadvantage is that there are a lot of commercial vessel tracking devices available in the market today and therefore, it is

up to the shipowner to decide which device to use as long as the said device provides the purpose of tracking a vessel.

The use of SHIPLOC provides a good deterrent against piracy. According to IMB Director Captain Pottengal Mukundan, "the fact that ships may have this device on board will concern the pirates because they will know that someone outside could know exactly where the ship is. And obviously, if a vessel with the device is actually hijacked, its position will be known to its owners and subsequently to law enforcement agencies." This deterrent can only be realized if all ships are fitted with this device or similar device. Perhaps a concerted effort, with the IMO providing the necessary regulation requiring the installation of this device or any other similar device with the same capability on board all ships, is the solution. With all ships carry a tracking device, pirates will think twice before hijacking a vessel since they will know that their activity can be monitored and passed on to the concerned law enforcement agency thereby increasing the likelihood of apprehension.

5.4 Problems of Enforcement

5.4.1 Pursuit of Pirates

One major constraint encountered in the conduct of enforcement against piracy is when a pirate ship flee into the territorial sea of another State after committing the crime of piracy on the high seas or in the territorial waters of another State. Under Article 111 of UNCLOS the right of hot pursuit ends when a pirate ship has entered the territorial waters of another state. Additionally, Article 105 does not allow the seizure of a pirate ship by a foreign warship within the territorial sea of another State without the consent of that State. The underlying reason for such limitation is that a foreign warship that enters into the territorial waters of another State may constitute an infringement of that State's sovereignty. Article 105 and Article 111 are therefore absolute and unconditional. However, due consent and approval may be given by a

State to allow a foreign warship to seize a pirate ship in the territorial waters of that State on a case to case basis, i.e., when that State deems it necessary to seek the assistance of another State in the apprehension of the pirates because of lack of resources. In the spirit of Article 100 where all states are encouraged to cooperate in the repression of piracy, a pursuing foreign warship can request the State to which the pirates has fled, to allow them to continue their pursuit against the pirate ship or seek the consent and assistance of that State.

One possible solution to the problem of seizure of a pirate ship when it enters the territorial waters of another state is through bilateral or multilateral agreements between neighboring states.

5.4.2 Resource Constraint

An effective enforcement against piracy involves sufficient means and resources for responding to piracy attacks. The inability of some States to effect a timely response against pirates may be traced to the lack of resources and infrastructure to combat piracy. An anti-piracy infrastructure and operational system should be in place. Infrastructure includes the organizational set-up involving agencies that should respond to a piracy incident and resources needed in the enforcement measure such as navy vessels, manpower and communication networks. An effective operational system involves procedures in responding to attacks such as the creation of a rescue coordination center.

Most developing countries, however, lack the resources to fight piracy. The Philippines, for example, has a good organizational set-up and a system that will provide for early response to piracy incidents reported to the rescue coordination center. This set-up is good in paper as it is properly documented. The vital element to a good piracy response, which are the needed resources such as vessels and communications, is lacking. In 1996, the Philippine government announced that piracy is a threat to the economic development of the country and is included in the long-term development of the navy. As such, the navy embarked on a 22-year

modernization and expansion program. This long term planning and vision later was sidelined when the needed funds of about \$12B did not materialize.

Piracy rarely occur in maritime areas of industrialized countries, if not minimal. It is due to the fact that industrialized countries such as the United States have the resources to respond to incidents. They have the air and sea resources to carry out the mission of pursuing pirates. This is a powerful deterrent when the pirates consider that there is minimal chance for them to escape.

Concerns of resource constraints in the fight against piracy in the Malacca Strait have brought forward recommended solutions. Japan which has considered the loss of or blockade of needed imported oil from the Persian Gulf a national security matter, has offered and proposed the use of Japanese ships for joint patrols with other law enforcement vessels in the Malacca Strait. While others see such proposal as a step to fill in the gap of needed resources, some are threatened by the fact that Japan might play a greater security role in Asia and the thoughts of Japanese colonial and wartime occupation might lead to the rise of Japan not only as an economic power but as a military power as well. Yet another recommended solution is to provide for a regional coast guard body composed of different coast guard agencies that would conduct patrols in the Strait. Some even recommended the creation of a UN task force to fight piracy in the Strait. While all these recommendations solve the problem of resource constraints, other issues such as political jurisdiction have yet to be answered. The fact remains that in order to overcome resource constraints in the fight against piracy, the help of developing countries to provide the needed resources is needed, as well as regional and international cooperation for joint enforcement response.

5.4.3 Regional or International Cooperation

In 1990, the Philippine government was able to trace nine piracy/hijacking incidents to a Singapore firm named Ten Tac Ltd. The company participated in

negotiations for the sale of one of the missing vessels at the port of Kao-hsiung, Taiwan and that another was sold by the company for scrap in Pusan, Republic of Korea. The Philippine government was virtually helpless as the incident involved a company outside its jurisdiction, namely, a Singapore company. Evidence to secure the apprehension of company officials, may not be admissible by Singapore authorities as the evidence were taken from other States, such as Taiwan where a vessel was sold, and Republic of Korea where a vessel was scrapped. Further, the lack of cooperation including the exchange of information between law enforcement agencies of countries affected have further exacerbated the problem (IMO, 2000).

The most effective method in the enforcement against piracy is the willing coordination between governments to provide an all out response or concerted response against piracy when one State needs the assistance of another. In addition, when piratical attacks occur within regional boundaries where attackers flee to another country for refuge, regional international agreements are needed. This is perhaps the most effective and least controversial method in combating piracy that has gained worldwide acceptance. The Philippines and Indonesia, for example, permitted the “encroachment” of navy vessels only for purposes of search and rescue after a permission is granted by the other State. In the Malacca Strait, Indonesia, Malaysia and Singapore conducted joint sea patrols in 1993 against piracy. This was not followed up because of the expensive use of naval and air resources.

Regional agreements are needed to facilitate a coordinated response to piracy attacks. In 1999, IMO initiated seminars in Asia and South America to discuss the piracy situation and consider countermeasures to be taken. One of the objectives of the seminar is to impress among the attending states the need for developing regional cooperation agreements between neighboring countries for coordinated patrols as well as other appropriate measures that may include enhanced cooperation in the arrest and prosecution of pirates. MSC Circular 622 Rev. 1 on Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships which was a result of the conclusions made in the two seminars mentioned above now contains

recommendations on how to deal with piracy, including the establishment of regional agreements to facilitate a coordinated response to piracy attacks. The revised Circular further provides a draft agreement which can be used by neighboring states so as to provide uniformity among regional agreements.

In Southeast Asia, regional institutions such as the Association of Southeast Asian Nations (ASEAN), the Asia Pacific Economic Cooperation (APEC) and the Council for Security and Cooperation in the Asia Pacific should include in their agenda efforts to minimize if not eradicate piracy through regional cooperation.

While regional cooperation is the best alternative to coordinate responses to piracy attacks, this author believes that regional cooperation is a short term solution when international cooperation does not exist. The lack of uniformity in the understanding of piracy between nations still exists. One country differs in opinion to another in terms of jurisdiction, enforcement, prosecution, punishment and the interpretation of piracy in international law. The limitation of regional cooperation is that piracy incidents that occur along or within two countries where regional cooperation exists, does not take into consideration nationalities of vessels involved in the piracy incident and therefore the views and perception of the offended nationality, i.e. the victim vessel, may differ from those of the countries where the piracy incident took place. For example, a piracy incident in the Malacca Strait involving the cooperation of three countries does not take into consideration the view of the flag state for which the vessel is registered. While UNCLOS provides that the state that effects the seizure of the pirates may prosecute the pirates, the flag state might insist that it is in the best interest that the flag state prosecutes the pirate since they are the offended party. The ambiguity of law, especially when the law uses the word “may” as to mean that it is up to the discretion of a party to follow such law or not, leaves countries in a quandary when the law is not absolute. Therefore, there is a limit to regional cooperation in that it still does not provide for international acceptance and uniformity of actions taken as regards to piracy. International cooperation is thus the ultimate objective. This can only happen when there exists uniformity in the interpretation of international law. The IMO can spearhead

mandatory regulations as regards to piracy by instituting conventions on piracy. A first step being undertaken is the creation of a code for investigations on piracy which is being discussed in the Maritime Safety Committee. However, investigation is just one of numerous other problems that IMO should also address, such as, piracy definition in international law, enforcement, jurisdiction, prosecution and punishment.

5.5 Investigation, Prosecution and Punishment

5.5.1 Article 105 of UNCLOS

Article 105 of UNCLOS states that upon seizure of a pirate ship, “the courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties in good faith.” In other words, the prosecution and punishment of piracy “may” depend on the state that carried out the arrest and their municipal laws. This may be varied from state to state. Penalties may differ with one state prescribing the capital punishment of death or *reclusion perpetua* while another state may just prescribe limited imprisonment. This problem is even more prevalent when piracy acts are committed by criminal syndicates who know that they can get away with the crime of piracy if they flee to a state that prescribes a lesser punishment or, worse, when no punishment at all is provided in national or municipal laws.

Further to the problem of interpretation of Article 105, the use of the word “may” means that a state that makes the arrest decides whether the pirates shall be prosecuted under their national laws. The offended party might feel that their interests cannot be met by the state prosecuting the pirates. The state that carries out the seizure of pirates and decides to prosecute them might find it hard to institute the maximum penalty when the offended party is not even a national of the state whose laws are for the protection of its nationals only. The SUA Convention provides a

clearer and more assertive guideline in the prosecution of an offender because it provides for the option to extradite or to prosecute an offender. Still, the decision is left to the apprehending state. And when an apprehending state does not have the right laws that can provide the maximum penalty to offenders, the offended party is left with no choice; and the flag state which may have stricter laws and which protects the rights of the offended party, cannot demand the extradition of the offenders.

To overcome this problem, it is clear that the international law on piracy should be revised so as to provide the necessary protection on the interests of the flag state as well.

5.5.2 Legislation

National laws differ from state to state. Some states do not even have laws concerning piracy. When national laws on piracy does exist, they need to be strengthened.

When laws on piracy including punishment differs from state to state, the effort on enforcement as discussed above becomes futile. A coordinated legislation between states would mean that pirates have no place to hide or seek refuge when they know that their piracy act carry the same punishment no matter what state he seeks refuge. Aggressive action against piracy includes the commitment by states to punish pirates with utmost impunity, providing for higher punishments and penalties. When the crime of piracy is meted by life imprisonment or death, it becomes an effective deterrent against piracy. There should be strong commitment and political will among all states in the fight against piracy.

5.5.3 Code for Piracy Investigation

The IMO Maritime Safety Committee (MSC) in its seventy-first session in May 1999 discussed the outcome of two missions sent to South America and Southeast Asia to find out the situation and measures taken by States in the area. The committee concluded that there is a need for more effective action in apprehending and prosecuting pirates. This conclusion was based on the premise that there exists the absence of effective procedures in some countries for investigating cases of piracy. While the act of piracy is committed at sea, the investigation process includes investigation in land including the pursuit of pirates by local law enforcement agencies or international agencies such as Interpol. The MSC agreed to develop a draft Code for the investigation of cases involving piracy in order to have a common approach to the investigation of cases and to promote cooperation between States in the course of investigations. The draft Code will also recommend the appropriate punishment for the crime of piracy so as to provide uniformity.

It is hoped that the draft Code will solve and provide a uniform or unified procedure to the problem related to investigation, criminal jurisdiction and prosecution of piracy acts as well as recommending an appropriate punishment for the crime of piracy. In the meantime that the draft Code has not been finalized, IMO recommends and urges member states to ratify the 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation or the SUA Convention which was discussed in Chapter 4. This Convention, although deals more on maritime terrorism, provides guidance on matters of investigation, criminal jurisdiction and prosecution.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

From the discussions and analysis presented in the preceding chapters, modern day piracy is indeed an aggravating problem in the world of sea transport today. From historical piracy dating back to as early as 1200 BC to present or modern day piracy, acts of piracy have remained an enigma that needs to be addressed lest it becomes a continuous problem in the future thereby affecting the economical viability of marine transport vis-à-vis other modes of transport.

The problems related to piracy is onerous and involves a lot of factors, each of which have to be addressed if piracy is to be eradicated in the future. The analysis presented in the preceding chapters suggest the following conclusions and recommendations:

Modern day piracy differs from historical piracy.

Piracy dates back to as early as 1200 BC and has changed in concept depending on the situation at that period in time. Piracy at that time was termed in many different ways such as privateering, buccaneers and corsairs. The act of piracy in historical times did not at all occasions represent an illegal act as in the case of privateers who were commissioned by a country to harass the enemy's merchant fleet. The method used in eradicating piracy during the eighteenth and nineteenth century involved the outlawing of privateers who once enjoyed the protection of a State, as contained in the Declaration of Paris and the Second Hague Convention.

Modern day piracy is a totally different activity compared to historical piracy. The act of plundering still exists but the purpose of piracy, such as poverty

alleviation and syndicated crime, differs from historical piracy. Yet, we continue to tackle the problem of modern day piracy based on laws that existed to tackle historical piracy. The Geneva Convention and UNCLOS 1982 were created when the act of piracy committed by professional syndicates was not even rampant at that time. To eradicate modern day piracy, therefore, involves the formulation of new international laws that can deal with the present situation of piracy.

Piracy in Southeast Asia has seen increasing incidence.

This dissertation focuses on piracy in Southeast Asia because that is where the majority of piracy incidents occur today. As much as 60% occur in Southeast Asia, specifically in high risk areas such as the Strait of Malacca, the Hong Kong-Luzon-Hainan Triangle, parts of the South China Sea, Gulf of Thailand, seaways of Indonesia and Malaysia as well as seaways in Southern Philippines. Further to having the most number of piracy incidents, the region also experienced an alarming increase in incidence from 96 incidents in 1998 to 165 incidents in 1999. Inasmuch as the great majority of incidents occur in Southeast Asia, this region can be used as a yardstick in determining the problems associated with piracy and analyzing the best way to solve these problems.

There is a need to change the definition of piracy in international law (piracy *iure gentium*) to cope with the problems associated with present day piracy.

The 1958 Geneva Convention and the 1982 UNCLOS failed in providing a definition of piracy in international law that meets the requirements of all signatories. The definition of piracy in quite a number of national laws differ from the international convention definition. This definition also fails to address the problem of modern day piracy.

The term “any illegal acts of violence or detention, or any act of depredation” should address the issues on magnitude and gravity of the offense in order to be

classified as piracy and the distinction between robbery and piracy by providing for a necessary element of a pirate taking control of a vessel.

The term “committed for private ends” should address the issue of the status of insurgents who differ from belligerents because the latter is covered by laws of war. The criterion on “for private ends” failed to take into account that vessels of today are hard to classify as that from a “neutral state” because a vessel may be registered and flagged in one country, the owner is from another country, and the crew and passengers belong to different nationalities. Furthermore, modern day piracy involves actions of insurgents who hide under the cloak of political motives to justify actions which otherwise would not in any way constitute a political act but rather illegal acts of murder, robbery, rape, kidnap for ransom, and extortion. In order to address these issues, the “private ends” criterion should be removed from the definition of piracy in international law.

The term “by the crew or passengers of a private ship...and directed...against another ship, or against persons or property on board such ship” or the two-ship criterion may have been a result of historical piracy where the act of piracy was only committed by a pirate ship against another vessel. The situation today is that more and more illegal acts of violence are in fact committed by the crew or passengers of a vessel. Some countries have in fact decided to deviate from the international law definition because they believe that how an offender arrives aboard a victim ship is not necessarily relevant as long as their purpose is to seize the ship by use or threat of violence. In differentiating an act of mutiny from an act of piracy, the act of taking control of the vessel by means of an unlawful act as described earlier should be a necessary element.

The term “on the high seas” or “in a place outside the jurisdiction of any State” fails to address the problem that without this criterion, most acts of piracy are in fact perpetrated in territorial waters. While the international law on piracy is supposed to provide for the universality principle, it fails in doing so because most piracy incidents today occur in territorial waters outside the present jurisdiction of piracy in international law. UNCLOS 1982 uses the term “high seas” in the definition of

piracy, and yet includes the exclusive economic zone in certain instances which makes the document more difficult to understand when referring to specific articles on piracy. Incidents in the Strait of Malacca, considered the most piracy prone area, are in fact not considered piracy in international law because the strait is bordered by territorial seas of three countries. The use of the “high seas” criterion has been used by piracy offenders who commits the act of piracy in one State and then seek refuge in another State.

The International Maritime Organization has tried to solve the problem of loopholes in the definition of piracy. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation or the SUA Convention which primarily addresses acts of maritime terrorism but could be used as a basis of solving problems related to jurisdiction and prosecution of offenders, is good only as a medium term solution because this convention is not entirely for the purpose of piracy but rather on terrorism.

Taking into consideration the above analysis, this author recommends that the 1982 UNCLOS definition which is identical to the Geneva Convention should be redefined as follows to suit modern day piracy:

Any illegal acts of violence, detention or depredation, committed by the crew or passengers of a private watercraft or aircraft who takes control of the same or another watercraft or aircraft, or against persons or property on board, on seas within or outside the jurisdiction of a State.

The salient points of the above recommended definition are:

- Illegal acts shall have a necessary requirement of the act of taking control of the vessel so as to distinguish piracy from armed robbery.
- The term “watercraft” in place of “ship” is used so that indigenous types of watercraft that are not considered as a ship will be included.
- The term “for private ends” is removed so as to include actions of insurgents.

- Two-ship requirement is removed so that even passengers and crew can commit an act of piracy. In such case, mutiny will also be an act of piracy such as the case in some countries. Further, commercial acts such as barratry will as well be considered as piracy.
- The high seas requirement is removed so as to include acts of piracy in territorial waters.

Measures should be in place to deny the pirate from selling a pirated ship or its cargo.

The best deterrence to piracy is to prevent a piracy act from happening by denying the pirate, especially pirate syndicates, any form of profitability from the sale of a pirated ship or its cargo. Stricter penalties or even criminal liability should be an international standard for unscrupulous buyers of pirated ships and stolen cargoes who have failed to conduct a proper check with concerned authorities to determine legitimacy of the transaction. International commitment should be in place to eradicate the use of forged documents or the issuance of registration papers to pirated vessels. As for stolen cargo, the Certificate of Origin should be a mandatory requirement in maritime trade.

The recommendations on preventing the sale of a pirated ship or its conversion to a phantom ship can be dealt with through an international forum such as the International Maritime Organization. The recommendations on preventing the sale of stolen cargo can be addressed by the World Trade Organization or any for a concerned with world trade to provide for the standards in establishing the validity of the sale of stolen commodities.

Additional preventive measures and countermeasures for ships should be undertaken.

IMO has sufficiently provided numerous resolutions and circulars containing recommendations for shipowners, shipmasters and crews in preventing and suppressing acts of piracy against ships. In addition, organizations such as IMB, BIMCO and ICS have also come up with recommendations. While the recommendations to actions of the crew are adequate, some recommendations need further improvement and additional recommendations are needed.

IMO has provided the guidelines for reporting acts of piracy. However, under-reporting still exists. IMO should instill amongst all shipowners the need to report acts of piracy in order to provide for a better analysis of piracy incidents and to help in the enforcement and prosecution of pirates.

The decision whether to recommend the carriage of firearms on board or not should be left to the shipowner or the flag state. A master or chief mate trained in the use of a firearm or better yet, the use of security officers or guards can be a good deterrent. As in any company whose interests and assets have to be protected, proper security measures include the judicious use of security guards. A trained crew or trained security officer knows when to provide resistance against a pirate attack and when to decide not to offer resistance when the attackers are sufficiently armed to deter any form of resistance.

This author does not recommend the use of commercial anti-piracy services that offer specialized anti-piracy skills for an often expensive fee, as it is an overrated reaction to a problem that can be solved by using ordinary security agencies.

The use of tracking devices should be made a mandatory requirement aboard vessels. As an optional equipment, it is a good device to use to track a pirated vessel in order to provide the enforcement response necessary to arrest the pirate and recover the vessel. As a mandatory equipment, it is a good deterrent against piracy because pirates will think twice before they pirate a ship when they know that the ship can be easily tracked and the chances of arrest is high.

Regional cooperation should be encouraged but the ultimate objective in eradicating piracy is through international cooperation.

While efforts are being made to encourage regional cooperation among neighboring states in the fight against piracy, the problem still remains that states differ in opinion and interpretation of international law on piracy. Countries with resource constraints, especially in areas where governments are hard pressed by the meager resources available in the fight against piracy, need the help of other states. These states may not necessarily be in the region but developed countries who have been successful in their enforcement against piracy and who have the resources to combat piracy. International cooperation is therefore needed as it solves the issue of uniformity in the interpretation of international law, uniformity in jurisdiction, uniformity in enforcement response, uniformity in investigation, and uniformity in legislation and prosecution. This can only be done through an international forum such as the International Maritime Organization coming as it does under the umbrella of the United Nations. While there is a need to redefine piracy in international law by means of amending the 1982 UNCLOS, IMO can take the necessary step in recommending to the United Nations such amendment. IMO can also come up with an international convention on piracy that will provide for uniformity in all aspects related to piracy.

Finally, the problem of piracy cannot be solved by just one solution. There is no single approach that will solve the problem of piracy as the problem is complex and involves too many parameters that have to be addressed. It involves numerous steps required to be taken to overcome the problems related to piracy; a number of them have been discussed above. Some of the recommendations given may be considered radical and not easily achieved, such as the revision of the definition of piracy in international law, but piracy has been with us for centuries and it seems that radical changes should be made if all States collectively agree that piracy should be

eradicated. These recommendations involve a collective agreement amongst all States since pirates know no boundaries. They are stateless. They attack indiscriminately, irregardless of nationality. They are “*hostes humani generis*.” They are enemies of mankind.

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APPENDIX A

Extract from ICC-IMB Annual Report on Piracy and Armed Robbery Against Ships

Locations of both ACTUAL and ATTEMPTED attacks, January to December 1991-1999

Locations	1991	1992	1993	1994	1995	1996	1997	1998	1999
S E ASIA									
Cambodia			1	1	1	1	1		
Indonesia	55	49	10	22	33	57	47	60	113
Malacca Straits	32	7	5	3	2	3		1	2
Malaysia	1	2		4	5	5	4	10	18
Myanmar(Burma)						1	2		1
Philippines		5		5	24	39	16	15	6
Singapore Straits				3	2	2	5	1	13
Thailand					4	16	17	2	5
FAR EAST									
China/ Hong Kong/Macau			1	6	31	9	5	2	2
East China Sea		1	10	6		1	1		
Hong Kong/Luzon/Hainan (HLH) Area			27	12	7	4	1		
Papua New Guinea						1	1	3	
Solomon islands									1
South China Sea	14	6	31	6	3	2	6	5	3
Taiwan					2				
Vietnam				2	4		4		2
INDIAN									
Bangladesh				2	2	4	9	9	23
SUB									
India		5	1		8	11	15	12	14
CONTINENT									
Iran					8	2	3	1	2
Sri Lanka			2	1	6	9	13	1	6
LATIN AMERICA									
Brazil			4	7	17	16	15	10	6
Caribbean				1					
Colombia			1		1	3		4	3
Dominican Republic						1	3	4	2
Ecuador				3		3	10	10	2
Guyana			1			2		2	
Jamaica						1	3	2	2
Mexico									1
Nicaragua					1	1			
Panama					1				
Peru					1	2	1	1	2
Salvador						1	1		
Uruguay						1			
USA							1	1	
Venezuela						1	3	1	6
AFRICA									
Algeria				1	1			1	
Angola			3				1	1	1
Cameroon							3	5	3
Egypt				1				2	1
Gabon					1			2	2
Ghana					1	2	2	4	2
Guinea				1	1	2	3	2	6
Guinea Bissau									1
Ivory Coast				1		4	4	1	4
Kenya								7	
Madagascar							1		
Morocco									1
Nigeria			2		1	4	9	3	11
Senegal						2	6	2	1
Sierra Leone						3	3		
Somalia/Djibouti				1	14	4	5	9	11
Tanzania			2	1	2	3	4	3	3
Yemen						1	5		
Zaire									1
Oman									1
REST OF WORLD									
Albania							5	1	
Denmark					1		1		
France								1	
Georgia									
Greece						1	2		
Italy					1	2		1	1
Malta							1		
Netherlands							1		
Portugal						*	1		
Russia					1		1		
Turkey					1	1	2		
Location Not Available	5	31	2						
Total for the year	107	106	103	90	188	228	247	202	285

**Status of ships during ACTUAL attacks,
January to December 1999**

	LOCATIONS	BERTHED	ANCHORED	STEAMING	NOT STATED
FAR EAST	Indonesia	5	51	33	
	Malaysia	2	12	3	
	Myanmar		1		
	Philippines	1	1	1	1
	Singapore Straits		1	8	
	Thailand		3	1	
FAR EAST	China/Hong Kong/Macau		2		
	South China Sea				
	Vietnam	1	1		
	Solomon island			1	
INDIAN	Bangladesh		23		
SUB	India		10		
CONTINENT	Iran		1		
	Sri Lanka	1	4		
LATIN AMERICA	Brazil	4	2		
	Colombia		2	1	
	Dominican Republic	2			
	Ecuador		2		
	Jamaica		1		1
	Mexico			1	
	Peru		2		
	Venezuela	4	2		
AFRICA	Angola		1		
	Cameroon	3			
	Egypt		1		
	Gabon		2		
	Ghana		2		
	Guinea		3	1	
	Guinea Bissau			1	
	Ivory Coast	2	2		
	Morocco	1			
	Nigeria		4	2	1
	Senegal			1	
	Somalia/Djibouti			5	
	Tanzania		2	1	
	Zaire			1	
REST OF WORLD	Italy	1			
	Sub total	27	138	61	3
Total for the year			229		

**Status of ships during ATTEMPTED attacks,
January to December 1999**

	LOCATIONS	BERTHED	ANCHORED	STEAMING	NOT STATED
FAR EAST	Indonesia		8	16	
	Malaysia		1		
	Malacca straits			2	
	Philippines		1	1	
	Singapore straits		1	3	
	Thailand			1	
FAR EAST	South China Sea			3	
INDIAN SUB-CONTINENT	Sri Lanka			1	
	India		4		
	Iran			1	
AFRICA	Nigeria			4	
	Guinea			2	
	Oman			1	
	Somalia/Djibouti			6	
	Sub total		15	41	
Total for the year			56		

Appendix B

Piracy Report of the Philippine Coast Guard

COUNTRY REPORT ON PIRACY AND ARMED ROBBERY ATTACKS AND ANTI-PIRACY ACTIVITIES

I. INTRODUCTION

The International Maritime Bureau said in its annual report, that pirate attacks worldwide surged 40 percent in 1999 as economic and political troubles in Indonesia spurred dramatic increase in Southeast Asia..

Despite her being in Southeast Asia, the Philippines did not go along with the trend and instead witnessed a decline in piracy by as much as 45 percent.

II. PIRACY AND ARMED ROBBERY SITUATION

A. DEFINITION OF PIRACY AND ARMED ROBBERY WITHIN PHILIPPINE CONTEXT

The United Nations Convention on the Law of the Sea defines piracy in Article 101 as, "(a) any illegal acts of violence or detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of making or of intentionally facilitating an act described in subparagraph (a) or (b)."

Using this definition, piracy is negligible in the country since they did not occur in the high seas.

Article 132 of the Revised Penal Code of the Philippines cites two ways or modes of committing piracy:

1. By attacking or seizing a vessel on the high seas
2. By seizing in the vessel while on the high seas; the whole or part of the cargo, its equipment or personal belonging of its complement or passengers.

It further gives the elements of piracy as: "1. That a vessel is on the high seas; 2. That the offenders are not members of its complement or passengers of the vessel; and 3. That the offenders (a) attack or seize that vessel or (b) seize the whole or part of the cargo of said vessel, its equipment or personal belongings of its complement or passengers."

The same penal code gives a further meaning of "high sea". It states that "it does not mean that the crime be committed beyond the three-mile limit of any state. It means any waters or the sea coast which are without the boundaries of low-water mark; although such waters may be in the jurisdiction limits of a foreign government."

As the Supreme Court said in the case of *People vs Lol-lo, et.al*, 43 Phil, 19, "now does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign state".

Article 123 particularly specifies that "the penalty of from reclusion temporal to death shall imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances: 1) whenever they have seized a vessel by boarding or firing upon the same; 2) whenever the pirates have abandoned their victims without means of saving themselves; 3) whenever the crimes is accompanied by murder, homicide, physical injuries, or rape.

If any of the acts described in Article 122 and/or Article 123 -is committed in Philippine waters, the same shall be considered as piracy under .Presidential Decree No. 532. It states that any attack upon or seizure of any vessel, or the taking away of the whole or part thereof of its cargo, equipment, or the personal belonging of its complement or passengers, irrespective of the value thereof, by means of violations against or intimidation of persons or force upon things, committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters shall be considered as piracy. It is within this context, that the piracy and armed robbery situation will be based on.

B. NUMBER OF INCIDENTS .

Piracy was at its lowest in 1999 during the last ten years. (Table I). However, this is not an assurance that the trend will continue although we are happy to note that this year for the past two months, only three cases have been reported in comparison to 17 last year and 40 in 1997 during the same period. (Table II)

In terms of the monthly average of piracy incidents, from 13 per month in 1996, it rose to 18 the following year, only to decline to 11 in 1998 and further down to 6 incidents per month last year. (Table II)

Table I

Piracy in the last Ten Years

Year	No. of Incidents	Growth Change
1990	80	-
1991	81	1.25
1992	132	62
1993	175	33
1994	174	-.6
1995	145	-17
1996	142	-2
1997	213	50
1998	132	-38
1999	72	-45

T 1 II

Monthly Track of Piracy Incidents

Month	1996	1997	1998	1999	2000
Janu	16	19	8	5	1
Febru	14	21	11	12	2
March	9	18	18	11	-
April	7	9	11	9	
May	5	25	14	15	
June	24	37	15	1	
July	9	21	11	2	
August	6	13	25	1	
September	17	13	9	3	
October	21	14	7	3	
November	8	19	3	6	
December	6	4	-	4	

C. SITES/AREAS OF CONCENTRATION

By island group, majority of the cases occurred in Mindanao for the last three years although in 1999, Luzon had almost the same total as Mindanao, which only means that the threat is no longer confined in the latter. (Table III) (see map)

Table M

Piracy Incidents by Island

	1997	1998	1999
Luzon	62	42	28
Visayas	3	8	14
Mindanao	148	82	30

In Mindanao, the most affected area remains to be Region IX consisting of a group of provinces stretching from the Zamboanga peninsula to Basilan. (Table IV). This is because of the region's geographical configuration, thriving barter trade, and persistent involvement of secessionist groups that pursue their piracy activities as resource-generating measures. .

In Luzon, the NCR, particularly Manila had the most number of piratical incidents while in the Visayas, there were isolated cases of piracy but of a more manageable level.

Table IV

Region	Province	1997	1998	1999
I	Batavia	1	1	-
	Ilocos Norte	1	-	-
	Pangasinan	-	-	2
II	Cagayan	1	-	-
III	Bataan	2	-	3
	Zambales	9	1	1
	Cavite	3	8	2
IV	Palawan	7	7	2
	Marikina	-	1	1
	Batavia	-	1	1
	Occidental Mindoro	-	-	1
	Oriental Mindoro	-	4	-
IVA	NCR	27	19	6
V	Sorsogon	3	-	5
	Camarines Sur	6	-	1
	Camarines Norte	2	-	-
	Masbate	-	-	3
	Capiz	-	1	1
	Iloilo	-	3	-
	Aklan	-	-	2
	Negros Occidental	-	1	1
VII	Cebu	2	1	1

VIII	Biliran	1	-	6
	Samar	-	-	2
	e	-	-	1
	Guimaras	-	2	-
IX	Basilan	28	15	4
	Zamboanga del Sur	41	42	9
	Zamboanga del Norte	36	2	2
X	South Cotabato	4	-	-
	Saran '	9	7	4
	Davao del Sur	10	3	5
	Davao Oriental -	2	1	1
XI	North Cotabato	1	-	1
	Sultan Kudarat	1	1	-
	Lanao del Norte	1	-	-
ARMM	Lanao del Sur	1	-	1
	indanao	-	1	1
	TawiTawi	9	9	2
	Sulu I	5	1	-

D. VICTIMS

Prime targets of pirates in Mindanao and the Visayas were fishing boats and passenger vessels. In Luzon, fishing boats were also prone to attacks although at the harbor areas like South Harbor, cargo/bulk carriers and other foreign ships were often preyed upon until pirates shifted their attention to the barges carrying imported wheat and soya.

E. CONSEQUENCES TO SHIP, CARGO AND CREW

Of the 72 victimized watercraft in 1999, only six of them were taken outright while the rest were divested of their engines, fishing gears, fish catch and personal belongings. (Table V)

As for consequences to the crew, the level of violence was on a downtrend during the last three years from 46 in 1997 to 33 and 14 in the succeeding years. In 1999, pirates had their share of casualties when sea borne escorts of FB NICOLE fought back last March 11 in Maasin, Sarangani and when the security escorts of MV MAGNOLIA EMERALD retaliated last December 3 in the vicinity of Sacol Island, Zamboanga City.

Table V

Consequences of Piracy for Ship. Cargo & Crew

Consequences	1997	1998	1999
No. of Incidents	213	132	72
No. of Watercraft Pirated	188	116	66
No. of Watercraft Sea jacked	25	16	6
No. of Persons Killed	46	33	14
No. of Persons missing	26	40	5
No. of Persons Wounded -	31	15	2

F. MODUS OPERANDI

Majority of the attacks was of the "low-level" armed robbery type, the most common form of attack generally carried only in the vicinity. of land from small high-speed craft by groups of petty thieves. They employed the following modus operandi:

1. Coming alongside a prospective vessel and jumping overboard without stopping the vessel. Pirates operate swiftly, divesting the engine, fish catch, cargo *and* other valuables of their victims. .
2. Posing as law enforcement agents clad in fatigue uniforms and armed with high-powered firearms.
3. Firing at random to scare their victims to submission.
4. Forcing victims to jump overboard before commandeering said vessel.
5. Operating in-groups and using more than one vessel so that there would be a lookout and getaway vessel.
6. Commandeering a vessel for the purpose of demanding ransom from their owners/operators.
7. Using "spotter" or spy vessels to monitor the presence of sea borne patrols.
8. Establishing strategic checkpoints used in extorting monthly protection fees and fish catch from fishing boats.

III. ANTI-PIRACY ACTIVITIES

Competent national organizations involved in safeguarding our maritime frontiers from malefactors include the Philippine Navy under the Department of National Defense, the Philippine National Police- Maritime Group under the Department of Interior and Local Government, and the Philippine Coast Guard under the Department of Transportation and Communications.

The Philippine Coast Guard, by virtue of Republic Act 5173 and Executive Order 477, is mandated to promote safety of life at sea, safeguard maritime environment and resources and enforce all applicable maritime laws. As such, the control of piracy is one of its major concerns.

The Coast Guard is faced with the formidable task of fulfilling a wide mandate with limited resources available to it. With a 17,600-kilometer coastline - twice longer than that of the United States - and in a country where nearly 70 percent of the population live or work near marine areas, the PCG has its work cut out for it.

A. STRUCTURE OF THE PCG

The PCG has a line and staff form of organization with the Commandant at the helm providing direction, control and supervision. Ably assisting him are the Deputy Commandant, the Chief of Staff, the twelve (12) central staffs, the operating units and the support units.

Its area of responsibility covers the maritime jurisdiction of the Philippines, embracing almost 802,800 square miles of the sea, comprising of 7,107 islands. Traversing across the seas on the 24 hours basis are more than 10,000 commercial vessels of various types carrying passengers and cargoes from and into the 315 ports located along the 34,000 kilometers stretch of coastline of the archipelago. It has more than 11,000 coastal barangays serving as home bases to more than 4,000 small fishing boats venturing out at sea.

For wider coverage, the PCG has ten Districts, 53 Stations, and 180 Detachments dispersed nationwide. The area of operation of a District normally covers one or two regions; a typical Coast Guard Station, two or more coastal provinces; and a Detachment covers at least three coastal municipalities. In addition, there are four (4) Coast Guard Passenger Assistance Offices, 25 Clearing Outposts and 17 CG Mobile teams in key areas. (see map)

B. PCG RESOURCES

1. MANPOWER

The vast area of responsibility easily overnvhelms the Coast Guard's manpower complement of 4,000 'personnel assigned ashore and afloat. At the present, the organization is recruiting additional personnel in the hope of achieving the desired manpower complement of 9,000.

2. VESSEL/AIRCRAFT

The Coast Guard today operates eight vessels, 46 small craft and 23 environmental watercraft. It also has one BN Islander Carcass and one 105 helicopter. To fully cover the maritime jurisdiction, additional vessels will be purchased eventually.

C. COAST GUARD'S ANTI PIRACY EFFORTS

The Coast Guard deploys patrol ships and small craft along the piracy prone areas to deter pirate bands from perpetrating their activities. Just last week, March 2 to be exact, joint elements of CG 2/CGIIF and Port State Control Manila were able to apprehend four pirates and confiscate from them 220 yards of mooring lines, one electric grinder, one breathing apparatus, and one chain block that were divested from MV CHRISTY of EURO Carrier Corporation while anchored 2.5 miles off Manila Bay anchorage area. The pirates' watercraft, Mbca SAUDI WITH LOVE was also seized in the process. The apprehended persons and the confiscated items were turned over to the Western Police District Station 5 for interrogation or investigation and proper disposition, respectively.

The exercise of Port State Control on ships entering major ports and harbors by the PCG facilitates the identification and recovery of pirate ships and apprehension of pirates. The ships in different areas can call the Coast Guard Stations and Districts through the Marine band and the international distress frequency 500-megahertz.

With the adoption of the Global Maritime Distress and Safety System (CGMDSS) anytime this year, ship crew, by switching on an Electronic Position Identification. Reconnaissance Beacon (EPIRB) could easily send out a distressed signal during the occurrence of piracy. Persistent EPIRB signals would able Search and Rescue (SAR) vessels and aircraft to respond immediately.

IV. LEGAL SYSTEM

Piracy is included under one of the heinous crimes as provided for in Republic Act Number 7659 that are punishable by death

Convictions are rare with the recurrent problem of prosecuting pirates since witnesses are afraid to testify. Lack of convictions has only emboldened pirates to pursue their activities.

V. CONCLUSION

Addressing the problem of piracy in Philippine waters has become an enormous task for the different law enforcement agencies, including the Philippine Coast Guard given their current capability and the geographic reality and the economic condition of the country. Compounding the problem is the persistent involvement of terrorist dissidents and secessionist elements that conduct piracy both as a means to generate money and as a military and political tool to demonstrate that they are still a force to reckon with.

Given their limited capability, law enforces have linked together in a spirit of solidarity for mutual benefit and for ensuring maritime security. There are inter-agency committees like the National Law Enforcement Coordinating Committee (NALECC) and the Philippine Center on Transnational Crime (PCTC) that are used for this purpose. The PCTC is a very new presidential body that was created by virtue of Executive Order No. 62 to formulate and implement a concerted program of action of all law enforcement, intelligence and other agencies for the prevention and control of transnational crimes, which include piracy. It concretizes cooperation, concerted operations and data resource sharing between and among local agencies and with foreign countries and international organizations involved in the crusade against transnational crime.

On the regional front, cooperation and linkages have been initiated to combat all forms of lawlessness including, exchanges of information and records in criminal activities, investigations, apprehensions, extradition and handling of criminals. Bilateral agreements entered into by the Philippine government with neighboring countries have paved the way for closer cooperation, coordination and well-oiled networking in matters of mutual interest. As for the ASEAN, it has responded with challenges in the past by seeking security in general unity and will continue to do so.

Appendix C

Extract of Articles 100-107, 58(2) and 111 of the 1982 UNCLOS

Article 100

Duty to co-operate in the repression of piracy

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101

Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of any aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

Article 102

Piracy by a warship, government ship or government aircraft whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103

Definition of a private ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the

seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 58(2)

Rights and duties of other States in the exclusive economic zone

2. Article 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

Article 111

Right of hot pursuit

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
6. Where hot pursuit is effected by an aircraft:
 - (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;
 - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or another aircraft or ships which continue the pursuit without interruption.
7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Appendix D

Samples Certificate of Origin

CERTIFICATE OF ORIGIN				
The undersigned _____ <div style="text-align: center; font-size: small;">(Owner or Agent, or &c)</div>				
for _____ declares <div style="text-align: center; font-size: small;">(Name and Address of Shipper)</div>				
that the following mentioned goods shipped on S/S _____ <div style="text-align: center; font-size: small;">(Name of Ship)</div>				
on the date of _____ consigned to _____				
_____ are the product of the United States of America.				
MARKS AND NUMBERS	NO. OF PKGS., BOXES OR CASES	WEIGHT IN KILOS GROSS NET		DESCRIPTION
Sworn to before me <div style="display: flex; justify-content: space-between;"> this _____ day of _____ 19 ____ Dated at _____ on the _____ day of _____ 19 ____ </div> <div style="text-align: right; margin-top: 10px;"> _____ <div style="font-size: small;">(Signature of Owner or Agent)</div> </div>				
The _____, a recognized Chamber of Commerce under the laws of the State of _____ has examined the manufacturer's invoice or shipper's affidavit concerning the origin of the merchandise and, according to the best of its knowledge and belief, finds that the products named originated in the United States of North America. <div style="text-align: right; margin-top: 10px;"> Secretary _____ </div>				

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
NORTH AMERICAN FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN

Please print or type

19 CFR 181.11, 181.22

1. EXPORTER NAME AND ADDRESS TAX IDENTIFICATION NUMBER: 	2. BLANKET PERIOD (DDMMYY) FROM _____ TO _____ 4. IMPORTER NAME AND ADDRESS TAX IDENTIFICATION NUMBER:
3. PRODUCER NAME AND ADDRESS TAX IDENTIFICATION NUMBER: 	

5. DESCRIPTION OF GOOD(S)	6. HS TARIFF CLASSIFICATION NUMBER	7. PREFERENCE CRITERION	8. PRODUCER	9. NET COST	10. COUNTRY OF ORIGIN
<div style="text-align: center; font-size: 2em; opacity: 0.5;"> NO INFORMATION TO BE REPORTED </div>					

I CERTIFY THAT:

- THE INFORMATION ON THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OR MATERIAL OMISSIONS MADE ON OR IN CONNECTION WITH THIS DOCUMENT;
- I AGREE TO MAINTAIN, AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE;
- THE GOODS ORIGINATED IN THE TERRITORY OF ONE OR MORE OF THE PARTIES, AND COMPLY WITH THE ORIGIN REQUIREMENTS SPECIFIED FOR THOSE GOODS IN THE NORTH AMERICAN FREE TRADE AGREEMENT, AND UNLESS SPECIFICALLY EXEMPTED IN ARTICLE 411 OR ANNEX 401, THERE HAS BEEN NO FURTHER PRODUCTION OR ANY OTHER OPERATION OUTSIDE THE TERRITORIES OF THE PARTIES; AND
- THIS CERTIFICATE CONSISTS OF PAGES, INCLUDING ALL ATTACHMENTS.

11a. AUTHORIZED SIGNATURE 11c. NAME (<i>Print or Type</i>) 11e. DATE (DDMMYY)	11b. COMPANY 11d. TITLE 11f. TELEPHONE NUMBER (Voice) (Facsimile)
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Customs Form 434 (121793)